

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION-MIDDLESEX COUNTY
INDICTMENT NO. 05-10-00164-S
06-10-00116-S
APPELLATE NO. 6576-06-T4

STATE OF NEW JERSEY,

VS.

MELANIE MC GUIRE,
Defendant.

*
* STENOGRAPHIC TRANSCRIPTION
* OF
*
* TRIAL PROCEEDINGS
*

Place: Middlesex County Courthouse
New Brunswick, N J 08903

Date: March 7, 2007

TRANSCRIPT ORDERED BY: Helen C. Godby, Esq.,
Assistant Deputy Public Defender
Appellate Section

BEFORE:

HONORABLE FREDERICK P. DE VESA, J.S.C.

APPEARANCES:

PATRICIA PREZIOSO, ESQ.,
CHRISTOPHER ROMANYSHYN, ESQ.,
DEPUTY ATTORNEYS GENERAL
FOR THE STATE

JOSEPH TACOPINA, ESQ.,
STEPHEN TURANO, ESQ.,
ATTORNEYS FOR DEFENDANT

Susan J. Marcinczyk, CSR
Official Court Reporter
Middlesex County Courthouse
New Brunswick, N.J.

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1 (Court resumes)

2 THE COURT: Mr. Turano, I just wanted to begin, I
3 wanted to address the members of the press.

4 The Attorney General indicated they needed some
5 time to have further discussions and preparation and they
6 know what I am about to address.

7 Ladies and gentlemen who are here from various
8 media organizations, as you know we have had several
9 requests for various documents and exhibits that are part of
10 this trial, and I have been indicating that as a first step
11 I need a written request pursuant to Supreme Court rules and
12 guidelines so that I can address the request officially, and
13 I do have the first written request from Court T.V., so, I
14 do believe that you are entitled to an answer at this point
15 in time, and I want to spend a little bit of time explaining
16 to you as a general proposition what we can do and what we
17 can't do.

18 First of all, it is clear that both in Federal,
19 under Federal and State Constitutions it has been held that
20 there is a constitutionally protected right of access to
21 criminal trials that is implicit both in the guarantees
22 under the First Amendment and under the New Jersey
23 Constitution.

24 The leading cases that the Court has sought for
25 guidance are the United States of America versus Martin and

1 the Philadelphia Newspapers Inc., and then that case was
2 cited with approval by our Supreme Court, that is a Third
3 Circuit case which is the Circuit that, of course, New
4 Jersey is part of, and then our Supreme Court in the matter
5 of the application of V V Publishing Corporation also cited
6 the Martin case and held that the same principle of public
7 access that are found under the First Amendment of the U.S.
8 Constitution are protected under the New Jersey Constitution
9 as well.

10 And I think, just so the record is clear, In the
11 Matter of the Application of V V Publishing, I think our
12 Supreme Court said it best when it quoted another case and
13 it basically stated, public scrutiny of a criminal trial
14 enhances the quality and the safeguards, the integrity of
15 the fact-finding process with benefits to both the defendant
16 and to society as a whole, public access to a criminal trial
17 fosters an appearance of fairness thereby heightening public
18 respect for the judicial process, and in the broadest terms
19 public access to criminal trials permits the public to
20 participate and serve as a check upon the judicial process,
21 an essential component in our structure of self government.

22 The institutional value of an open criminal trial
23 is recognized in both logic and experience and ultimately
24 our Supreme Court has adopted guidelines to promote access
25 to the public and to the press of information coming from

1 our criminal trials, and it has been said that that right of
2 access can only be overcome when there is an overriding
3 State interest articulated in findings by the Court that
4 would impose limitations on the right of access.

5 Now, you know that I have consulted with counsel
6 in this matter and I very carefully considered these various
7 requests and I have reviewed the Supreme Court guidelines
8 and I have found that providing broad access to the
9 information requested would not in anyway deprive the
10 defendant of a fair trial. I have not been provided with
11 any type of information that would cause the Court to
12 conclude that the defendant would be deprived of a fair
13 trial by providing the kind of access that has been
14 requested, and I also do not find that providing access of
15 information that is flowing from this trial would in any way
16 deprive any future defendant or deprive anyone of a fair or
17 impartial trial in any future proceeding, if there should be
18 one.

19 So, as a matter of law I do not find that there is
20 any basis for this Court to impose per se restrictions on
21 the access to the media and to the public on information
22 flowing from these proceedings.

23 Now, having said that, there are obvious
24 logistical and administrative barriers that would have to be
25 overcome in order to provide the kind of access that is

1 being requested here.

2 As I think you have all seen or heard there are,
3 at the present time, anticipated to be approximately one
4 thousand exhibits that might be somehow discussed during the
5 course of this trial. There could be, well, on the work
6 product witness list that the attorneys provide to the Court
7 just so that the Court can select a jury and estimate the
8 time, there are over four hundred names listed.

9 Now, obviously, as an example, that witness list
10 is not an official court record and it doesn't even contain
11 an accurate rendition of who will be a witness in this
12 case. It is, in effect, attorney work product. They've
13 studied the case, they've studied all of the information and
14 they've made an assessment that these are the possible
15 witnesses in the case.

16 So, in this particular request that I have now
17 received from Court T.V. there's a request for a witness
18 list. Well, there is no witness list that is accurate and
19 that is a part of the Court record at this point in time, so
20 this is clearly something that the Court is not in a
21 position to provide.

22 However, I have said to some members of the media
23 that at the end of a day there will be a list of witnesses
24 who have testified and all one needs to do is discuss with
25 the Clerk the names of those people, if there are problems

1 with their spellings or whatever, but that is an example of
2 a situation where the Court takes the position that there is
3 simply no limitation on access to the press of any part of
4 the official court record, if you will, but, if you can, I
5 am sure all appreciate, that there are many things, like my
6 notes and my law clerks notes and attorney work product that
7 are not part of the Court record but that still may be in
8 the possession of those of us who are involved with this
9 trial.

10 So, sometimes the request cannot be complied with,
11 and in a moment I am going to ask you for some guidance or
12 some help as to how we can best do this.

13 I would like to go over for a moment with you the
14 request for in-court t.v. so that I can at least give you an
15 Idea of some of the practical difficulties, some of the
16 things that we can easily comply with and some of the things
17 that are not so easily complied with.

18 So, for example, we have a copy of the indictment.
19 Obviously, the indictment is a matter of public record and
20 it can easily be copied and provided to the press.

21 On the other hand, we have a copy of the witness
22 list, and again I say to you there is no witness list in the
23 true sense of the word, there is simply attorney work
24 product that is submitted to the Court with possible
25 witnesses that I am required to discuss with the jury during

1 jury selection just to see if they know anybody that might
2 be mentioned; but it would be inappropriate for me to turn
3 that over now as a part of the official court record because
4 it simply is not.

5 Another request is for the criminalist reports of
6 Elizabeth Dutton. Those of you who cover Court T.V. realize
7 a lot of time police officers will be questioned about
8 confidential investigative reports that they have written
9 because of alleged inaccuracies or dates and times and
10 things like that and those reports are never admitted into
11 evidence and they are never made part of the official court
12 file, and our Supreme Court guidelines make it very clear
13 that investigative reports of law enforcement agencies are
14 not part of the official record.

15 So, there's an example of something that might
16 exist. It might be mentioned, but it's not part of the
17 Court file, and absent some consent by the Prosecutor or a
18 police department, the Court is simply not in official
19 possession of those items. They are not necessarily even
20 turned over to the Court.

21 You will hear, at some point I am sure, a witness
22 coming in and saying, well, my notes were kept, I don't have
23 those notes, they are not part of the court file. They may
24 be mentioned, but they are not part of the court file.

25 Similarly, the report, I have a request here for

1 the report of Detective Ray Pickell, marked as an exhibit
2 for discussion purposes but never introduced into evidence
3 and never turned over to the Court.

4 So, those kinds of things are not part of a court
5 file that can be turned over.

6 Now, on the other hand, we have an exhibit
7 involving the gun purchase from Pennsylvania. We have three
8 separate exhibits. They have been admitted into evidence.
9 The Court does have them in its possession as part of the
10 Court file and they can be turned over.

11 Bail information, here, again, that's something
12 that in some parts is available. How one, what one means
13 when we talk about bail information is an entirely different
14 story, and I would ask you that when you make these requests
15 to the Court you try to understand that you have to make the
16 request narrow and concise so we can comply with it. Bail
17 information is a very good example.

18 We have a records that says how much bail has been
19 set in this matter, but there was also a transcript of court
20 proceedings, I think on two or three different days, where
21 there was a full argument in court with all the factors that
22 the Court had to consider during the bail hearing. I think
23 some of you were present during the bail hearing. I don't
24 have a transcript of that bail hearing and, obviously, it's
25 not part of the court file, but a transcript is available.

1 Again, I don't mean to put any of you through
2 hoops, but you must understand that certain categories of
3 information may not be available in the court file or they
4 may be requested elsewhere and this issue of the bail
5 hearing transcript is a good example of that.

6 So, I suspect that when somebody is asking me for
7 bail information they are not simply asking how much the
8 bail was and when it was set, but that is part of the court
9 file and it can be easily provided, but any further details
10 are found in the bail hearing transcript and, again, that
11 has to be separately requested from the Trial Court
12 Administrator who is responsible for the oversight of our
13 Court Reporters.

14 So, that's where we stand.

15 Now, I have a question that I would throw out to
16 you, I guess I would throw it out first to Court T.V.,
17 having said what I have just said it is clear that this
18 Court will be required, without disruption to the criminal
19 trial, which again requires this Court to exercise
20 discretion, everything I have just said about your right of
21 access all presupposes that you can be granted access
22 without distraction to the criminal trial. If I am to
23 receive on a daily basis a dozen or so requests from
24 different organizations for different exhibits and pieces of
25 evidence and different exhibits, and different pieces of

1 evidence and different photographs obviously we could never
2 comply on a piecemeal basis without having some level of
3 disruption to the criminal trial.

4 My suggestion would be, just as you have agreed
5 upon pooling the coverage and photographs, you might want to
6 consult with one another and agree upon some level of
7 sharing this information.

8 Let me give you an example.

9 I am told that some of you are interested in
10 having the audio tapes of the electronically recorded
11 conversations when they are admitted into evidence.

12 The Court feels as a matter of law that it must
13 grant that request.

14 Now, I am told that the audio tapes at this point
15 are found in approximately five or six disks. Obviously, if
16 there are fifteen or twenty organizations here and I were to
17 get requests to reproduce five or six C.D.'s every couple of
18 days or every couple of hours it would be very burdensome on
19 the Court.

20 It would be much more sensible if the media, well,
21 I won't say more sensible, but easier on the Court, if you
22 will, if the media got together and agreed that I could turn
23 over or the Court can turn over five C.D.'s which would
24 represent all of the audio tapes of the recorded
25 conversations once they are, once we know which ones are

1 going to be offered in court; and then the media can figure
2 out how to share that information and reproduce that
3 information.

4 That's just one example.

5 We have requests for photographs. Obviously, the
6 photographs that are submitted to Court are original pieces
7 of evidence that cannot be tampered with and cannot be
8 altered in anyway. The Attorney General, I believe, has
9 digital copies of those photographs. The Court may be in a
10 position to make paper copies of those photographs. I am
11 consulting with the Attorney General right now about whether
12 or not the Attorney General would be willing, under Court
13 order, to assist the Court by providing digital copies of
14 photographs that are admitted into evidence; but here again,
15 we can probably use your collaboration and help with that.

16 These photographs, as I understand them and as you
17 have seen in the last couple of days, involve almost on an
18 ongoing basis photos being admitted into evidence that I
19 have never seen before with the exception of those few that
20 have been the subject of motions. As they come in, I have
21 no idea how many will come in on a given day. If we were to
22 try to do this without some organization, again, it would be
23 somewhat disruptive.

24 My sense is that maybe at the end of a day or at
25 the end of a week, you know, a lead organization can make a

1 request and we can figure out how to best accomplish it.

2 Now, again, you understand that the Court is not
3 saying that one cannot take pictures of what's on the screen
4 or, you know, take notes about that, and I know that's
5 already been done. I am saying if you actually want the
6 Court to reduce things for you, we are not in a position
7 while we have an active court file being compiled as we
8 speak to continually stop and then make photographs or make
9 photocopies and then get another request and stop again.
10 So, we need some help.

11 So, that's the bottom line on access to exhibits
12 and transcripts.

13 As a matter of law, I make a finding that members
14 of the media are entitled to anything that is ultimately
15 introduced into this court proceeding and the Court will
16 make every effort to expeditiously turn that over to those
17 of you who request it. Our finance department is trying to
18 figure out a way of, you know, efficient billing for this
19 as, you know, reviewing our guidelines, there are certain
20 costs you must bear. We will try to minimize them and we
21 are working on that right now.

22 As a matter, there's a request from Court T.V. to
23 go live at some point in time. I have consulted with
24 counsel. Here, again, there is no finding that the Court
25 can make that would prevent live coverage. I am satisfied

1 that the public right to monitor these proceedings overrides
2 any concern that there might be. There's been no showing of
3 any possible deprivation of a fair trial because of a matter
4 being broadcast live.

5 Obviously, the Court has already granted, pursuant
6 to our Supreme Court guidelines, the right to cover these
7 proceedings electronically and broadcasting them thereafter
8 live is not, in my view, provide any further risk of denying
9 the defendant or the State of a fair trial.

10 So, that request is also granted.

11 Now, do any of you have any questions or any
12 suggestions as to how we might address this overriding issue
13 of how the Court can logistically comply with what may be a
14 number of ongoing requests for a large volume of items
15 without disrupting these proceedings which, of course, is a
16 primary concern to the Court. Anybody have any questions or
17 suggestions?

18 Can I ask you to state your name for the record
19 because our Reporter has to take this down.

20 MS. FINLEY: Liza Finley, 48 Hours.

21 I think what we are requesting to do is the same
22 as covering the trial would have Court T.V. at the end of
23 the day perhaps even right here, even something that would
24 not be cumbersome, just come in here with a camera and just
25 shoot the exhibits of the day and --

1 THE COURT: You see, as I've explained earlier, I
2 have some concerns about that process because you may
3 remember, I am sure you remember because you are
4 experienced, years ago there were times when Prosecutor's
5 would have press conferences and they would lay out all of
6 the evidence in the case on a table and then there would be
7 pictures of that, and that process has not only be
8 criticized but prohibited by our Supreme Court.

9 The Court cannot be part of making a display of
10 evidence. The Court has an obligation to provide you with
11 access to court material but it really can't set up, you
12 know, displays for your review because it can be argued at
13 some point or some people may feel that that kind of a
14 display is prejudicial, it's not completely fair or
15 impartial, it doesn't cover all off the evidence, if you
16 will, and the Court can't be subjected to that kind of
17 possible assertion or, you know, perception. It just simply
18 puts the Court in a position where we are doing more than
19 providing you with access or, in effect, you know, laying
20 out props, so to speak, or creating displays, and I
21 appreciate your, you know, I know you are trying to help out
22 here and I really appreciate that, but I have said to you
23 before, I don't think that we can go in that direction
24 because of those concerns.

25 Now, pooling, obviously we can do, and if I could

1 get some type of a request on a regular basis with the
2 agreement of all the organizations perhaps consistent with
3 what we've already done; in other words, we already have the
4 Star Ledger and the Home News agreeing to disseminate
5 photographs, we already have Court T.V. agreeing to pool the
6 electronic coverage. If those same organizations can be
7 responsible for somehow dividing up these other, dividing up
8 these other types of exhibits it would be helpful to the
9 Court.

10 I am told, by the way, today is the last day this
11 week that we will be having jury proceedings. Tomorrow the
12 Court will be addressing other matters and so probably some
13 of these issues are not really going to come out that
14 critical until next Monday. So, there is a day or two that
15 you can begin to kind of collaborate with one another and
16 give us an opportunity to address your request.

17 But in any event, that's something that, you know,
18 in terms of setting up a display at the end of the day, I
19 really think that would not be appropriate. So, I am sorry
20 that we can't do that.

21 If you can just kind of picture it, I mean,
22 imagine if the Court were to take a bunch of suitcases, gun
23 permits and things like that and put them on a table and let
24 you photograph that, I think that really would not be
25 something that the Court should be doing.

1 Anybody else have any other suggestions other than
2 the pooling?

3 All right, well, it would be extremely helpful to
4 the Court if you could agree among yourselves to, with some
5 kind of pooling. I will continue to work on this and get
6 back to you with respect to the, what our finance department
7 feels is the appropriate way of dealing with the billing.
8 My sense is right now we will simply keep track of what we
9 give to people and then charge you the regular rates.

10 Yes, your name, please?

11 MS. MERKSAMER: Marni Merksamer with ABC News.

12 I just want a clarification. I am confused. Are
13 we only going to be able to shoot things the Court provides
14 us such as photographs, audio recordings, video, as far as
15 physical evidence is concerned we wouldn't be able to shoot
16 that at all because of what you are stating how it can be
17 shot.

18 THE COURT: Not true, not true, you can shoot it
19 when it's being displayed in court, but I can't create a
20 display for you to shoot later.

21 MS. MERKSAMER: Okay.

22 THE COURT: Some of these exhibits have already
23 been shot or photographed, if you will, anything that
24 happens in this court you know is part of the open court
25 proceedings but the requests that we are talking about goes

1 a little further and asks us to reproduce a display and
2 that's something that I can't do.

3 Yes, sir.

4 MR. GLATT: John Glatt.

5 THE COURT: Mr. Glatt, how are you?

6 MR. GLATT: I'm good. Listen, I want to clarify, I
7 have been shut out of the photo pool on the understanding of
8 I am not a daily paper, I don't want to get shut out of this
9 other pool when it's formed.

10 THE COURT: You have to put your request, but the
11 reason than you have been, as you put it, shut out so far,
12 my understanding is you are an author who is writing a book
13 and you are not really part of the news, if you will, and as
14 you can appreciate there are many people that get involved
15 in commercial enterprises surrounding court events, and I am
16 required under our Supreme Court guidelines to provide
17 access to bona fide media outlets for news reproduction and
18 not to provide access to individuals who are involved with
19 commercial enterprises that simply are, you know, doing
20 research and things of that sort.

21 MR. GLATT: But I have official accreditation from
22 New Jersey Press.

23 THE COURT: I don't mean to debate that with you
24 now. I am just trying to give you an explanation. If you
25 wish to make further inquiry, if you wish to contest the

1 Court's determination or the Supreme Court guidelines then
2 you could do that, but I have to follow the Supreme Court
3 guidelines and the Supreme Court guidelines are very clear
4 that what we are doing now is designed to accommodate the
5 press for purposes of news and not to accommodate
6 individuals who are interested in making movies or writing
7 books.

8 I want to assure you, you haven't been singled
9 out. There have been others who have made similar requests
10 and they've gotten the same answer.

11 Again, if you are not happy with that answer then
12 you need to request some kind of an official review of it,
13 I'm sorry.

14 MR. GLATT: Thank you.

15 THE COURT: Yes.

16 MS. FINLEY: Liza Finley, 48 Hours.

17 One more question regarding the exhibits. Once
18 the trial is completed do you think there will be
19 opportunity to request some of the physical, that we can't
20 get electronically, some of the physical evidence such as
21 the suitcase?

22 THE COURT: Well, under New Jersey Court Rules
23 once the trial is completed the exhibits are turned back
24 over to the parties that have offered them. The Court does
25 not retain possession of exhibits.

1 As you could imagine with thousands and thousands
2 of trials the feeling has been that those people that have a
3 great stake in the preservation of those exhibits and who
4 have the capacity to store them for future proceedings are
5 in the best position to do so.

6 So, there may be, subject to the positions of the
7 attorneys, there may be this brief window of opportunity at
8 the end of a trial, you know, very short window of
9 opportunity where the exhibits will still be here before
10 they are turned over to the proponents; but as a general
11 proposition once the trial is over the official court file
12 will be completed, if you will, and that may have copies of
13 certain documents and things of that sort, but the actual
14 original exhibits that have been marked into evidence will
15 be turned back over to the people that have proposed them.

16 MR. SERRANO: Ken Serrano, Home News Tribune.

17 Have you made a determination of the transcript of
18 the audio tapes?

19 THE COURT: Yes, the Court has made a
20 determination, again, based on the prevailing case law, that
21 the transcripts will be provided to the press at the same
22 time as the audio tapes. The case law is pretty clear that
23 the transcripts should be provided.

24 Now, here again, we are talking about a large
25 volume of material, and I am going to need some help from

1 the press in terms of how we can reproduce that. We may
2 need some help from the Attorney General.

3 Anything further?

4 We need to get the jury out, ladies and gentlemen.
5 How are we doing?

6 MS. PREZIOSO: Your Honor, before we bring the
7 jury in the State has an application.

8 Judge, prior to trial beginning there was a
9 hearing held regarding the photos, specifically the photos
10 of William's remains, and during that one of the photos that
11 your Honor withheld judgment on is State's Exhibit 32.

12 THE COURT: I am familiar with it.

13 MS. PREZIOSO: Judge, at this time the State will
14 be offering Doctor Wendy Gunther today. She's the medical
15 examiner from Virginia that did the examination of William's
16 remains.

17 In preparing her for her testimony there were
18 several concepts that were discussed and information that
19 was gone over and the picture is illustrative of several
20 things. The picture shows the ragged cut of William's
21 torso. It shows the body positioning and how he was folded
22 up. It clearly shows livor mortise, the blanching patterns
23 on his skin the relative position of the blanket covering
24 William's face, the wrinkley fingers are indicative of
25 washer woman, what's described as washer woman syndrome,

1 when moisture gets into the finger tips, and the photo would
2 help her if she were able to put it up and explain to the
3 jury these concepts, it would help them see what, indeed,
4 she was talking about.

5 I would just like to respectfully remind the
6 Court, your Honor, during the defense opening they raised
7 several issues as to freshness of the body and of that
8 nature, so these are areas that the State really does want
9 to explore and make sure that the jury understands.

10 As Doctor Gunther is not a local medical examiner,
11 the State did fly her in for this purpose, and were this to
12 be decided later in the trial it would require us to fly her
13 back with the explanation the photo really does provide a
14 visual guide to the jury and I think will make it easier for
15 the jury to understand.

16 Again, Judge, although this is a picture of a
17 torso, of the pictures that we had it was the State's
18 feeling that this was the least gruesome and externally we
19 are not offering it for anything other than what it is a
20 picture of, and the State would request at this time your
21 Honor render a decision and permit the State to introduce,
22 subject, of course, to proper authentication, that the
23 picture comes in.

24 THE COURT: Well, what is the probative value of
25 the photo that cannot be addressed in a less inflammatory or

1 unpleasant manner? Tell me specifically. I understand that
2 this is a case involving murder and desecration of human
3 remains, but tell me why a photograph, as opposed to
4 testimony and a diagram, let's say, or other visual aides by
5 a medical examiner would not be sufficient to demonstrate to
6 the jury what the, you know, the facts in issue tend to be?

7 MS. PREZIOSO: Well, Judge, of course Doctor
8 Gunther can use language to explain all of this to the jury;
9 however just like the discussion we've been having this
10 morning about the significance of seeing exhibits, a
11 photograph, we live in a visual society and a photograph is
12 always, not always, but, it illustrates concepts that words
13 certainly don't deliver and that is exactly what we would be
14 talking about here.

15 I would guess that most of the jury hasn't dealt
16 with anything of this sort before in their lives, and
17 hearing terms about decomposition and blanch patterns and
18 marbling and washer woman's syndrome and whatnot, those are
19 concepts that, of course, can be described in words, but
20 just as with any media, a photograph helps to make those
21 words truly be understandable.

22 THE COURT: But what is it about those words that
23 are so hard to understand or that are so hotly contested
24 that it's necessary to display a gruesome photograph to this
25 jury and to the public, I might add?

1 I understand that the picture is worth more than
2 the words, so to speak, but that's not the test. The test
3 is what is it that the State is required to prove that
4 cannot be proven by the words and by some less inflammatory
5 or unpleasant manner? That's the test. Tell me what it is
6 that you are required to prove that has to be proven by this
7 photograph?

8 MS. PREZIOSO: Your Honor, I would respectfully
9 disagree as to the test. I think with most evidence we
10 could prove things basically through words but that's not
11 the most persuasive form of media to get it to the jury. I
12 understand where the Court --

13 THE COURT: The test is the Court's requirement to
14 weigh the probative value against the prejudicial impact.
15 That's the test. I know you don't disagree that that's the
16 test, okay. So, what I am asking you is tell me why the
17 probative value of the photo is so great that it's not
18 outweighed by the prejudicial impact. So far the only thing
19 that the State has said to me both before and today is
20 simply that it would prefer to use the photograph because
21 the photograph is more illustrative, you know, the torso, if
22 you will, than a simple, verbal explanation, and I agree
23 with you, it is, but that is not what the Court is required
24 to do. The Court is required to balance whether or not you
25 need that full illustration because of the obvious

1 prejudicial impact and the unpleasantness of it.

2 MS. PREZIOSO: Your Honor, may I suggest this, can
3 we go on with Doctor Gunther's testimony and let's see how
4 it goes and then I may reapply for the photo.

5 THE COURT: Let me hear from the defense first.
6 Maybe they won't disagree with you.

7 MR. TACOPINA: Oh, but, your Honor, that's an
8 unlikely scenario here. I agree with your Solomonic ruling
9 so far.

10 THE COURT: I haven't ruled yet.

11 MR. TACOPINA: You did before, and I want to go
12 back to before the hearing. There was nothing new
13 articulated today than was articulated at that hearing, and
14 I thought we had that hearing before we started this jury
15 trial. So, we didn't do this at ten minutes after ten, but
16 my point is just this. I think the case law is precisely
17 clear, Johnson and Locket, and when there's an issue of
18 prejudicial impact, substantially outweighing its probative
19 value like we have here, I just think the Court should not
20 be letting it in. We discussed it. We argued it. Our
21 papers are on point in that regard. We are not contesting
22 the facts for which the photographs are offered. There are
23 so many less prejudicial ways to present this sort of
24 evidence.

25 In the Locket case the Court stated that

1 presentation of evidence that, quote, could not help to
2 focus the juries attention on the gruesome details of the
3 condition of the victim's body rather than defendant's
4 guilt, which precisely fits into why Ms. Prezioso wants this
5 in. She said herself, we live in a visual society. That's
6 great, but that's not the test here, and this can go on.
7 She has the clarity to describe the things. The reasons the
8 State wants this in today to show the rugged cut, the
9 position of the body, the fact there's washer woman syndrome
10 on the water-logged hands and the freshness, none of this is
11 in dispute. If we open doors, certainly we proceed at our
12 own risk.

13 This was the suitcase, you will recall, that was
14 recovered two weeks later on 5/11. This is the only
15 suitcase we think there's any issue regarding relevancy of
16 freshness and decomposition is the first suit case, the one
17 on 5/5, because these other suitcases were in water and sand
18 for so much longer, in this instance another week. So, they
19 also are not facts in dispute.

20 You will hear by our cross examination they are
21 not facts in dispute, and these pictures, your Honor, you
22 have seen them, I think would do so much to inflame the
23 passions of this jury, it would be so emotional, invoke such
24 visual reaction, I just don't think this jury is going to be
25 able to evaluate them in a passionate manner. That's the

1 standard, and by the way, there was nothing argued today
2 that was argued two weeks ago.

3 That's our position. We would oppose it and ask
4 the Court to adhere to it's ruling.

5 THE COURT: Ms. Prezioso, again, I am satisfied
6 here that at least at this point there is nothing that the
7 State is required to prove through the use of this
8 particular photograph that would be so valuable that it
9 would outweigh the obvious prejudicial impact. The
10 photograph is rather unpleasant and gruesome, and from
11 everything that I have heard nothing that the State would be
12 trying to prove that could be illustrated by the photograph
13 is really being tested.

14 Now, as I said before, the doctor can authenticate
15 the photograph, and if it turns out through cross
16 examination or even through part of the defense case that
17 there is some critical point that can only be proven through
18 the photograph, then that tips the balance; but at this
19 point I am satisfied that the photograph does not have such
20 great probative value that it is outweighed by the
21 prejudicial impact and, therefore, I do think that because
22 the photograph does have a tendency to inflame, could have a
23 tendency to inflame or have a prejudicial impact upon the
24 jury because of its graphic nature and its unpleasantness, I
25 will not allow it to be published or admitted into evidence

1 at this time, but I will reserve my decision subject to any
2 cross examination and subject to any defense case that may
3 come later.

4 MS. PREZIOSO: Judge, that's fine.

5 The State, just so the record is complete, would
6 like to direct the Court again, as we did before, to State
7 v. Savage which was also a desecration case involving body
8 parts in a suitcase and certainly it is within the Court's
9 discretion, but that's fine.

10 Your Honor, just so you know, there are other
11 photos as well that we are just going to be authenticating
12 today on C.D.S. Nothing will be shown, and they will be
13 held should issues relevant to those photos come in so we
14 won't have to bring Doctor Gunther back.

15 THE COURT: Mr. Turano.

16 MR. TURANO: Just for clarification, was that
17 State's Exhibit 32 we were discussing?

18 MS. PREZIOSO: Yes.

19 MR. TURANO: Thank you, sorry.

20 THE COURT: Can we bring the jury out?

21 MR. TACOPINA: While we do that, I ask the State,
22 not through any fault of their own, to make sure when the
23 photos are displayed the witness knows not to do what the
24 first witness did, which was flip them up and turn them
25 around.

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1 MS. PREZIOSO: Judge, I want to make sure the
2 witness knows that picture isn't coming in. She knew we
3 were going to be arguing it this morning.

4 THE COURT: Are we ready to proceed?

5 MS. PREZIOSO: Yes, Judge.

6 THE COURT: Ready to proceed?

7 MR. TACOPINA: Yes.

8 THE COURT: Okay.

9 (Whereupon the jury returns to the courtroom and
10 court resumes)

11 THE COURT: Good morning, ladies and gentlemen,
12 please be seated.

13 First let me apologize to you for the delay
14 getting you out here. The Court had to go over some matters
15 with counsel. It took a little longer than I expected, but
16 we are ready to begin now and, Ms. Prezioso, I am going to
17 ask you to call your next witness.

18 MS. PREZIOSO: The State calls Doctor Wendy
19 Gunther.

20 THE COURT: Doctor Gunther, please stand and
21 follow along with the clerk as she administers the oath.

22 W E N D Y G U N T H E R, sworn.

23 MS. PREZIOSO: May I continue?

24 THE COURT: Go ahead, Ms. Prezioso.

25

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1 DIRECT EXAMINATION BY MS. PREZIOSO:

2 Q Good morning, Doctor Gunther.

3 A Good morning.

4 Q Doctor Gunther, by whom are you employed?

5 A I'm Assistant Chief Medical Examiner in the
6 Commonwealth of Virginia, Tidewater District.

7 Q Please give the jury the benefit of your
8 experience and educational background?

9 A I am a medical doctor. I did go to medical school, it
10 seems like a long time ago. I now only treat dead people.
11 I am not only a physician, but I have had special training
12 in pathology and in subspecialties of forensic pathology
13 pediatric pathology, anatomic and clinical pathology.

14 I am Board certified in all those, anatomical,
15 pediatric and clinical pathology. I have done coming up on
16 three thousand autopsies.

17 Q Doctor Gunther, prior to working in the
18 Commonwealth of Virginia what other officers have you worked
19 at as a forensic pathologist?

20 A Before Virginia I worked for not quite two years in
21 Washington, D.C. as a forensic pathologist. Before that I
22 got my first forensic job, Memphis. I was there not quite
23 five years. Before that I trained in Manhattan and Brooklyn
24 as a fellow in the Office of the Chief Medical Examiner of
25 the City of New York.

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1 Q Doctor Gunther, have you ever been called to
2 testify as an expert in forensic pathology before the courts
3 in this country?

4 A Yes.

5 Q And can you approximate for the jury about how
6 many times you have testified?

7 A You know, I really don't know. I have lost track. I
8 know it's more than thirty, but I don't know how many more.

9 Q Have you ever been denied by any court of this
10 country being deemed an expert in forensic pathology?

11 A No.

12 Q Have you ever testified before the courts, any
13 courts within the State of New Jersey as an expert in
14 forensic pathology?

15 A Yes, my very first testimony when I was not even all
16 the way through my fellowship in forensic pathology, I
17 testified in the juvenile and domestic court, if that's the
18 right word for it, that was my very first testimony.

19 Q And could you roughly approximate what year that
20 was, Doctor Gunther?

21 A Well, if I was in Fellowship must have been 1994, 1995
22 probably.

23 Q And you have worked continuously as a forensic
24 pathologist since?

25 A I have.

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1 Q Can you describe for the jury what is forensic
2 pathology?

3 A Well, pathology is the branch of medicine that studies
4 what goes on in your body when you are sick. It doesn't so
5 much seek to cure you, but to give your doctor what he or
6 she needs to cure you. If your doctor takes a Pap smear we
7 read it. If your surgeon takes out a tumor, operates, we
8 look and see if it's cancer and tell your doctor what to
9 do. We don't cure you, yourself, but study the course of
10 disease.

11 Forensic pathologists study the course of trauma.
12 We look at what happens in your body when you are injured,
13 whether it's an injury that kills you instantly or takes
14 time; what happens to you after death; whether that injury
15 comes from a act of God like an tornado or heatwave or
16 whether it's inflicted by yourself or an injury inflicted by
17 yourself or another.

18 MS. PREZIOSO: Your Honor, before continuing the
19 State would request the Court deem Doctor Gunther an expert
20 in forensic pathology.

21 THE COURT: Counsel, do you have any questions of
22 Doctor Gunther?

23 MR. TACOPINA: No, your Honor. No objection, by
24 the way, no objection.

25 THE COURT: All right, the Court is satisfied by

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1 virtue of her training and experience of there being no
2 objection that Doctor Gunther is qualified to testify as an
3 expert in these proceedings in the field of forensic
4 pathology, and before we go any further, then, Ms. Prezioso,
5 I just want to address the jury.

6 Members of the jury, ordinarily witnesses are only
7 allowed to teach about matters within their personal
8 knowledge or observation and they are not allowed to testify
9 with respect to opinions that they may have about certain
10 matters that are of interest in the case.

11 However, under our law we have an exception to
12 this rule and this exception is that the Court may qualify
13 an expert witness who has some special training or
14 experience beyond that of an ordinary juror, and that
15 witness may give an opinion that will assist the jury in its
16 fact finding duties.

17 In this case, and there will be other cases, the
18 Court has determined that Doctor Gunther is an expert in the
19 field of forensic pathology and that she will be, therefore,
20 authorized to state her opinions as to certain issues in
21 this matter which may assist you in your fact-finding
22 duties.

23 I want you to understand that the mere fact that
24 the Court determines that someone is an expert witness does
25 not mean that you are bound by their opinion. You must, as

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1 in the case of all witnesses, evaluate the credibility of
2 the witness. You have a right to consider the witnesses
3 qualifications and the basis for the witnesses opinion and
4 you have a right to consider all the factors that I have
5 already discussed with you preliminarily in weighing the
6 credibility of a witness.

7 So, Doctor Gunther is qualified as an expert in
8 these proceedings and, therefore, will be authorized to
9 render certain opinions, but, again, just like any other
10 witness, it is up to you to decide how much weight you want
11 to give to her testimony. You have a right to accept it,
12 only accept a part of it if you only think a part of it is
13 credible or reliable or you can reject it completely if you
14 choose to do so, but in any event, that is the law on the
15 use of expert witnesses in court.

16 Ms. Prezioso, please continue.

17 MS. PREZIOSO: Thank you.

18 Q Doctor Gunther, can you explain what an autopsy is
19 to the jurors?

20 A An autopsy is like a big surgical procedure when you
21 open up the body and take everything out; but before I start
22 an autopsy I put my hands in my pockets and I walk around
23 the dead body looking at it. Do I see obvious injury? Do I
24 think it's the right person? Do they look like they are the
25 right age? Do I see trace evidence? Do I see, you know,

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1 clothes? Do the clothes look normal? Do I see signs of
2 what happened after death? Did this person die in the
3 hospital where the doctor is working on them? Those are the
4 things you have to look at first before you ever start
5 approaching opening the body.

6 I take lots of photographs. I have my assistants
7 help me photograph the body. We undress it. We take the
8 things out the doctors have put in, if there are any. We
9 collect trace evidence if we find any. When we've done that
10 that can take hours, sometimes then we open up the body, we
11 have like a big surgery, we take out everything, we follow
12 gunshot paths, we collect bullets if we find them. We
13 collect fluids and other things to be taken to the lab
14 tested for blood. We open up the head and take out the
15 brain. If we have to take, we take out the spinal cord. We
16 look for everything that helps us understand. We take
17 things out, we don't stop, I take every organ dissecting it,
18 weighing it, take small pieces of it, put it in a safe jar,
19 taking portions important, take microscopic slides. I take
20 some to my histologist, so I can read slides on the
21 microscope. Do I see obvious signs that can explain this
22 person's death.

23 Even though I release the body after I do the big
24 surgery on it and the body can be respectfully buried, I
25 don't consider the autopsy complete because I haven't looked

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1 at the slides yet. I haven't got the reports back from
2 toxicology telling me if there are drugs. I haven't gotten
3 ancillary reports I may need.

4 When I have everything back I can think about the
5 case, put it together and write it up, then I figure I can
6 do an autopsy and I testify to it in court.

7 Q And the purpose of the autopsy, what information
8 are you looking for to determine what?

9 A Basically trying to figure out the cause and manner of
10 death. Everything else is secondary to that.

11 Q Doctor Gunther, I would like to call your
12 attention now to May 5th, 2004, did there come a time when
13 you worked on a case associated with remains being recovered
14 in a suitcase?

15 A Yes.

16 Q Can you describe that to the jury what happened on
17 May 5th and what your involvement was?

18 A May I make reference to the notes?

19 THE COURT: Sure.

20 Q Doctor Gunther, what I am going to ask you to
21 do --

22 MR. TACOPINA: Hold on, excuse me, can we just have
23 them identified with our notes so we can look along here.

24 MS. PREZIOSO: Judge, I am going to give Doctor
25 Gunther the State's copy of her autopsy report which is

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1 State's Exhibit 218?

2 A On the 5th of May we got in a suit case that contained
3 a pair of legs from the knees down. This was very unusual.
4 I have never before received a suitcase with a pair of legs
5 from the knees down.

6 We looked at the knees, knees and legs. You can't
7 tell the sex of a person from legs from the knees down, but
8 you can make a guess and they looked male to us based on
9 strong musculature and dark hair. We could tell they were
10 right and left and they looked like they had been sawed
11 off. They also looked fresh.

12 Q Now, Doctor, you just used the term fresh, can you
13 explain to the jury what do you mean by that, what's fresh?

14 A I mean fresh, you know, I've looked at a lot of dead
15 bodies, not just the nearly three thousand I've autopsied
16 but bodies I didn't have to autopsy, bodies my colleagues
17 were working on. At the same time I have seen thousands and
18 thousands of dead people. Most of the dead people I see
19 died the day before. They were in their house or they were
20 in the hospital and they get put in the cooler overnight and
21 they come to us in the morning and the cooler is kept at
22 forty degrees because at thirty-two degrees they freeze and
23 warmer than that they don't keep optimally. So, the cooler
24 is like a refrigerator except it has a special control to
25 make sure it's always at forty. Those people look fresh.

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1 When a person is not found right away when they
2 die in their house alone, whether they die of natural
3 disease and just no one knows they've died or whether they
4 are murdered and the murderer leaves, they start to go bad.
5 So, I have looked at a lot of people who have just begun to
6 decompse, which is go bad, and a lot of people who had
7 decomposed a lot and quite a number of people who have
8 decomposed a lot of the way and are partly skeletons.

9 These legs looked fresh to me like the legs of
10 people who come from the hospital the day before.

11 Q Now, Doctor, you mentioned decomposition. We'll
12 come back to fresh, but can you explain to the jury what is
13 the process of decomposition?

14 A Decomposition is when the bacteria that normally lives
15 in your body and on your body break your body down because
16 you are dead. They don't break you down while you are alive
17 because you have an immune system that fights them, but as
18 soon as you die the bacteria find themself not opposed by
19 any white cells and they start breaking you down.

20 Where is the most bacteria in your body? Inside
21 your colon, which is full of feces which is mostly bacteria.
22 That's the first thing that happens in decomposition. After
23 that they spread through the blood and tissues all over your
24 body and it goes bad. It's a lot like hamburger, if you
25 have ever gotten some hamburger from the grocery store and

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1 left it in your trunk in the summer, it went bad. If you
2 put it in the fridge it stays a lot longer before it goes
3 bad. It's a very similar process.

4 Q Now, is the speed of decomposition the same for
5 everyone or is it dependent on other factors?

6 A It's absolutely dependent on other factors, and the
7 only really important factor is temperature. In our classic
8 forensic text, Spitz and Fisher, there are photographs of a
9 mother and father killed by a psychotic son. They were both
10 killed on the same day and the cops found the bodies the
11 next day. One was killed in the basement, which was cold,
12 and one was killed in the attic, which is hot. The one in
13 the basement looked fresh and the one in the attic was badly
14 decomposed.

15 I have autopsied a body of a man who was shot and
16 dumped at the edge of a cotton field in Harden County, which
17 is a very hot county in Tennessee in August, and he was
18 skeletonized part way by the next day. Most of that was due
19 to bacteria and also insects.

20 But, when I used to work in Wisconsin, if a person
21 goes through a hole in the ice in October and doesn't come
22 out until spring, they haven't begun to decompose yet.

23 It's just like hamburger. I said you took some
24 hamburger from the store and put it in the freezer is it
25 good six months later, probably. In your fridge,

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1 good six months later, maybe not. A week, maybe. If you
2 put it on the kitchen counter is it good, probably not. If
3 you left it on the top of your car, is it still good in the
4 hot sun, no. It's totally temperature dependent.

5 With that there are continually factors that a
6 big, fat person decomposes faster because they are rounder.
7 A person in a dry place can mummify. The Egyptian mummies,
8 they are very careful to remove everything that has feces
9 and germs and they put myrrh and other things in them that
10 keep them sterile to fight bacteria. Once they are dried
11 out they tend to go without decomposing for thousands and
12 thousands of years. If you don't dry out the germs of your
13 body the insects will turn you to a skeleton, and it's
14 completely dependent on temperature.

15 Q So, going back to the phrase, fresh, Doctor
16 Gunther, you mentioned the day before, but could a body be
17 two, three, four days old and be kept at a temperature where
18 the body parts would still appear fresh?

19 A Yes, because I've sometimes had to autopsy someone
20 Monday that died Friday from the hospital, they were in the
21 cooler and they still looked fresh.

22 Q Is that similar to say if you grocery shop once a
23 week and maybe buy chicken on Saturday and cook it on
24 Thursday, would that still be considered fresh?

25 A I would hope so, although with chicken, if you put it

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1 in your fridge you may notice after four or five days it
2 begins to smell funny, the. Smell is actually bacteria
3 by-products and that's your nose detecting you are beginning
4 to undergo very early decomposition. That's the point you
5 say, I don't know if this chicken is good any more.

6 Q Now, the legs looked fresh. Could you also
7 describe how much blood was left in the legs?

8 A There wasn't any blood at all at the cuts. There was
9 more than one cut. There were cuts across the knees where
10 the legs have been divided, but there's also a cut in one
11 leg on the side where there looks like a cut mark or a saw
12 mark into the leg like somebody started to cut it and
13 stopped. It's not bleeding. There's no blood on the
14 exposed bone across the tops of the knees. There's no
15 bleeding in there and there's no blood I can see with the
16 naked eye inside the black plastic bag inside the suitcase.
17 The legs have no smell.

18 Now, when I was trying to get blood I opened up
19 all the way and I traced the popliteal artery and vein, I
20 traced two large blood vessels that run down next to the
21 bone in the very center of your leg that carry blood down to
22 your foot. I was able to get a little bit of blood out,
23 enough for DNA cards so we can see whose legs they were, but
24 there was no blood leaking out of the middle.

25 Q Now, Doctor Gunther, you examined the bags as well

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1 that the legs were found in?

2 A What I did with the bags, I was very careful not to
3 touch them, because I do not do everything in the autopsy
4 suite. I take care of the body. The body is my job. I
5 don't do fingerprints. My only association with DNA is to
6 collect samples for the experts on DNA to do DNA. It's not
7 like television.

8 So, what I did with the bags is I only handled
9 them with gloves on so I wouldn't transfer my own DNA and my
10 own prints to them, and I photographed them carefully and I
11 removed the pieces from them and removed them carefully and
12 put them somewhere safe so they could be turned over to the
13 responsible authorities.

14 When I was taking the legs out of the side and I
15 looked inside with my eyeball, I didn't see blood. I have
16 seen a lot of blood and I didn't see blood.

17 Q Doctor Gunther, could you tell by visual
18 examination whether body parts were refrigerated or not?

19 A No, I can't tell that.

20 Q So, if the legs of this person had been removed
21 and the person that put them in the plastic bags let the
22 legs drain out and then wrapped the legs and put them in a
23 refrigerator, then it could have been certainly two, three,
24 four days before you found that?

25 A Sure.

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1 Q Now, where was the cut at the knee, Doctor
2 Gunther?

3 A I am making reference to autopsy report, State's
4 Exhibit 218 here because I don't remember exactly where they
5 were cut at the knee. Truncated lower legs belonged to
6 white adult likely male. The right leg has been divided
7 through the knee joint exposing the tibial plateau. The
8 tibia is the biggest bone in your leg. It comes up to the
9 top and it spread out and they call that a plateau. It's
10 right through the knee, the kneecap is divided, you can see
11 right inside the knee where doctors would operate, you could
12 see the cartilage. That's the right leg.

13 The left one has been divided in two places. It's
14 through the bottom of your femur which is your thigh bone
15 and also the top of the tibia. It's cut unevenly. It's
16 really sawed right through the bone. I called it a saw
17 mark. It looked like a saw mark to me, and there's, again,
18 the cut on one of the legs looked like somebody had started
19 and stopped.

20 Q Now, when you say a cut through the cartilage,
21 Doctor Gunther, did it also cut through any specific type of
22 tissue that would have been exposed?

23 A Well, you are cutting right through a person's legs,
24 you are going to cut through arteries, veins, connective
25 tissue. Bones are one of the kinds of connective tissue,

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1 ligaments are another kind of connective tissue and muscle.

2 That's another thing, muscle looked fresh, the way
3 steak looks fresh when you keep it in the fridge.

4 Q Doctor, can you go back to connective tissue, I
5 didn't hear you.

6 A Bone is connective tissues, tendons, the ones in the
7 back of my hands are connective tissue, ligaments are
8 connective tissue, anything that connects one piece of your
9 body to the another.

10 Q Now, when doing an autopsy and calculating time of
11 death, is that a precise, can you do that precisely without
12 knowing where the body was?

13 A It is not precise at all. All the calculations for
14 time of death are based on assuming the temperature is
15 around seventy degrees, and we know that you go bad much
16 faster if you are somewhere warm and much slower if you are
17 somewhere cold. Even if a person says to me, even if an
18 officer says to me, Doc, this body was in an apartment with
19 the heat set to sixty-eight, I have to know was that person
20 lying under a sunbeam under a window and I still can't
21 calculate an exact time of death. I mostly don't give times
22 of death anymore. I feel they are unreliable. I mostly say
23 the time the person was last seen alive and the time they
24 were found dead. Other than that I can't really be more
25 precise than days, and in this case in particular I can't be

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1 precise at all.

2 Q Doctor Gunther, going back to decomposition, can
3 you explain to the jury blanching patterns and how long,
4 what's the range for how long that would take to appear?

5 A When you die your heart stops pumping. Suppose you die
6 in bed, you are lying face up. The blood that's not being
7 pumped gradually settles to your back. Why? Gravity.

8 So, when I first look at a dead person generally
9 their face is pale and their chest is pale if they died
10 lying face up, and their sides are very dark red, redder
11 towards their back. That's just settled blood. We have a
12 name for it, we call the livor mortis, l i v o r, which is
13 different from the liver in your body. Some people
14 pronounce it livor, so we know you are not talking about
15 about the liver in your body.

16 This settling of the blood dependent upon gravity
17 can be easily interfered with. For instance, if you are a
18 heavy person lying on the sheet, the sheet and bed push up
19 on your back so you have a big blanched area, that's the
20 white spot where the blood couldn't settle because the sheet
21 and folds are up, and I will see the folds of the sheet on
22 your back, livor mortis. If you die in your clothes, I'll
23 see the clothes, buttons, elastic bands marked in the
24 settled blood. At seventy degrees, around, it's supposed to
25 start settling right away. It's supposed to take a day to

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1 reach maximal, sort of like rigor mortis, it's sort of
2 eventual change to the point where it becomes permanent.

3 If you die phase up and I take your body into the
4 autopsy suite and for some reason I have to turn you face
5 down and leave you there for a couple hours your livor
6 mortis will gradually start shifting to your face and belly
7 because it's gravity, right.

8 When you have been dead somewhere warm enough for
9 you to begin to decompose, all your little blood vessels in
10 your skin break down, your capillaries, they break down and
11 the blood starts leaving have the capillaries through all
12 the little break down points and it gets stuck in the skin.

13 At that point, if I turn you it will no longer
14 move. That's called fixed livor mortis, but, again, all of
15 this is temperature dependent. It can happen in a few hours
16 in a person at a very hot place like the guy at the edge of
17 the cotton field. It can take months in a person who is in
18 a very, very cold place, like underneath a Great Lake in
19 winter.

20 Q Doctor Gunther, also explain the term, rigor
21 mortis?

22 A Rigor mortis is a fascinating phenomena noted by humans
23 beings for thousands of years before we began studying it
24 scientifically. When you first die your body is lax and
25 relaxed, and then you gradually start to stiffen up. You

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1 stiffen up in the position in which you die.

2 So, I am sitting in this chair with my leg
3 crossed. If I were to die in this chair like this no one
4 disturbed me and I went into rigor mortis my leg would be
5 crossed like this, my other knee would be bent and if you
6 laid me on my back my right leg would be up making a corner
7 and my other leg would be crossed to crossing.

8 I see people all the time whose hands appear to be
9 lifted up in front of them. We know nobody is going to lie
10 with their hands like that. I know they have died face down
11 with their hands underneath them. They went into rigor
12 mortis and got stiff.

13 We understand the scientific concept which it has
14 to do with a break down of molecule called ATP. First you
15 are limp. Twenty-four hours later, depending on
16 temperature, you are stiff. Twelve to twenty-four hours
17 later it passes over again, you will gradually you will get
18 released again and that's beginning of when you start going
19 bad.

20 Q Doctor Gunther, if we could move on now to May
21 11th, 2004, and by the way, Doctor Gunther, I am handing you
22 State's Exhibit 1006.

23 For the record, those are the doctor's copy of her
24 autopsy photos which was in her file that we marked so we
25 would know what you were referring to if you should need

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1 them. I just wanted to give them back to you.

2 If we could go back to May 11th of 2004, did
3 anything occur that day regarding the suitcase
4 investigation?

5 A Yes, that's when we heard that the second suitcase had
6 been found. Actually, from the 5th when we got the suitcase
7 with the legs in it we were anxiously waiting for the rest
8 of the body, and on the 11th we heard they had found the
9 second suitcase but that it had been exposed to the sun on a
10 beach for a period of days, and when we got the suitcase in
11 and we unwrapped it, we got the sand off it, we found inside
12 the upper part of a man's body from below his belly button,
13 chest, arms, hands and head beginning, not beginning,
14 decomposing fairly badly.

15 Q And did you perform an autopsy on that piece?

16 A We did.

17 Q And, doctor, before going into that, did you
18 observe the body inside the suitcase, the torso?

19 A We did. We took lots of pictures.

20 MS. PREZIOSO: Your Honor, I am handing the
21 witness State's Exhibit 32.

22 Q Doctor Gunther, I am going to ask you to make sure
23 that neither the jury nor the audience sees the content of
24 the picture. If you would just hold it down this way.

25 Doctor, if you could describe what that's a

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1 photograph of?

2 A I don't remember if this was a photograph I took or a
3 photograph taken by my assistant. I think I took this
4 picture.

5 This is a picture of the open suitcase with the
6 black plastic trash bag unfolded and the torso and upper
7 arms of the decedent exposed with his arms folded around it.

8 Q Does that photograph fairly and accurately depict
9 what the suitcase looked like after the trash bags were
10 lifted and the torso was exposed?

11 A It fairly and accurately depicts the dead person and
12 the trash bags. You can't really see the suitcase itself.

13 MS. PREZIOSO: I'll take that, please.

14 Mr. Tacopina, are we okay with authentication.

15 MR. TACOPINA: Sure.

16 Q Doctor Gunther, could you describe where the
17 blanket was on the body?

18 A There was a blanket over his face.

19 Q Now, can you describe the condition of the torso
20 and your examination to the jurors?

21 A Most definitely decomposing. Decomposition isn't
22 always the same all over the body because whatever area is
23 more exposed to germs goes bad quicker, whatever area is
24 warmer goes bad quicker.

25 So, the lower half of his body had been cut off.

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1 There was a ragged edge with the skin higher, cut higher and
2 then some muscle, and then his guts sticking out. As a
3 result his whole abdominal cavity, which was exposed to
4 germs and could easily get warm because there's nothing like
5 skin defending it from the outside, was really badly
6 decomposed, to the point later in the autopsy I was looking
7 for the pancreas and I wasn't even sure I recognized it.

8 On the other hand his chest wasn't in that bad of
9 shape. Parts of his body, parts of his skin that may have
10 been colder weren't in that bad of shape. His face was
11 still a recognizable face.

12 When I looked at his brain during the autopsy his
13 brain sort of liquified and fell apart as I was examining
14 it. So, there were parts badly decomposed and they were
15 probably the parts that were warmer. They were probably the
16 parts that were warmer.

17 Q Doctor, you mentioned, you used the term ragged
18 edge to describe the cut. Can you talk to the jurors a
19 little bit more about that, a description of the cut
20 through, through the decedent's torso?

21 A I make clean cuts all the time because I open bodies
22 with scalpels. I know what a clean scalpel cut looks like.
23 A scalpel is basically a razor blade on a handle, leaves a
24 very straight cut.

25 I cook, I know what a normal cooking knife looks

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1 like when you cut food. This was a really ragged edge and
2 it's hard for me to say whether it was a saw or a tear
3 because the edge had begun to decompose. So, some of the
4 raggedness was due to the way it was cut and some was
5 probably due to the fact while it was going bad little
6 pieces were crumbling off it.

7 Q Now, Doctor Gunther, are you aware of where this
8 suitcase was recovered from, the second one?

9 A I am aware that it was found on the beach of a research
10 Island and that's as much as I know.

11 Q Do bodies decompose at different rates out on the
12 beach in Virginia in May as opposed to in the waters of the
13 Chesapeake Bay?

14 A Yes, because the water is still kind of cold in May, at
15 least it's not hot; where if you've ever laid on the beach
16 in the afternoon you know how hot it can get and
17 decomposition is totally temperature-related, so it's going
18 to be hot on the beach, there's not going to be any cool
19 water conducting the heat away from the suitcase. I am sure
20 most of his decomposition went on while he was on the beach.

21 Q And as part of the information that's given to you
22 to rely on as medical examiner you are informed of
23 approximately how long they would have thought it was on the
24 beach?

25 A Yes.

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1 Q And do you recall in this case how long they
2 thought it was on the beach?

3 A I think it was at least a day and a half because it was
4 one of the interns working at the research station who paid
5 any attention to the suitcase. The scientists paid it no
6 attention whatsoever. I remember being told she passed on
7 her morning walk at least once and did nothing about it, and
8 then passing it again decided to find out what was in it.
9 So, I know it was at least a day and a half. It may have
10 been longer, I don't recall.

11 Q And Doctor Gunther the green coloring of the skin,
12 is that part of decomposition as well?

13 A Yes, it is.

14 Q And what causes that?

15 A When your blood starts to break down in your skin first
16 you get livor mortis that doesn't move, it's still red on
17 his body. You can still see some area where the livor
18 mortis is kind of read. Then it begins to undergo a lot of
19 decompositional processes all from bacteria. One of the
20 things the bacteria do, they basically chew up the blood and
21 they leave behind a by-product that's green. It's sort of
22 the same green as a bruise, not a bright green, sort of
23 gray-green, and they can do that in a generalized area, or
24 patches or in a process called marbling which is very
25 interesting. They take large veins and they eat the blood

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1 and you see a pattern of the veins through the skin. That's
2 just another way bodies decompose.

3 Q Doctor Gunther, if a body has less blood in it
4 than a normal body would, say it was cut up and allowed to
5 drain would that affect the rate of decomposition?

6 A That's very hard for me to say because I have never
7 done or heard of an experiment where somebody took two
8 bodies, drained all the blood out of one and didn't drain
9 the blood out of another and saw the body decomposed faster.

10 The only thing I can say, blood is warm. If it
11 kept the heat in It would probably decompose faster, but I
12 really can't be sure.

13 Q Now, did you do an autopsy on the torso?

14 A I did.

15 Q And can you describe what you found upon your
16 examination?

17 A Sure, I saw the body of a white man who had begun to
18 decompose. I made a rough guess as to his age, I thought he
19 have was in his thirties to forties but I couldn't get
20 closer than that. I was able to determine the color of his
21 eyes. He looked healthy. Didn't look overweight, didn't
22 look thin, he looked muscular. Some of the skin of his back
23 and the right sides of his face weren't as far gone as his
24 belly and the left side of his face. Typical patchy
25 decomposition.

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1 His scalp hair, which was brown and fairly long,
2 was beginning to slide off in pieces. That's called
3 desquamation, but he wasn't bald. This is another thing
4 that happens as you go bad, actually your whole scalp or
5 pieces of it will slide off carrying the hair with it.
6 That's why when skeletons are found they generally have no
7 hair. His scalp was sliding off, but I didn't think he was
8 bald. Hair, half inch long on the sideburns to three or
9 four inches long on the top of his head. Longer than mine.

10 I felt his face and his nose with my hands and I
11 didn't feel any fractures, nobody had broken his nose,
12 didn't look like he was punched or hit or anything.

13 He had brown eyes. Of course his corneas had
14 clouded after death. The whites of his eyes were very pale.
15 There weren't any petechiae, little blood blisters you get
16 when you are strangled, there were no signs he was
17 strangled. Natural teeth in the mouth. When I am looking
18 at a dead body, looking at the mouth from the front, I can
19 usually only see the front teeth. I can't see all the way
20 back, but our x-rays showed lots of fillings. The teeth I
21 could see from the front, I could see from the smile, looked
22 like pretty good teeth.

23 He had a little bit of stubble across his upper
24 chin, but no beard. His neck looked like it hadn't been
25 injured. His chest didn't look like he had emphysema,

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1 looked fairly normal, muscular. I usually say whether the
2 person has a fat belly, a distended belly, which means they
3 are sick and their belly is swollen, a flat belly. I
4 couldn't really say because his belly was cut in half, so I
5 say it didn't show any evidence of fat accumulation. What
6 can you say about a belly that's cut in half, he doesn't
7 look fat.

8 I didn't see any visual surgical scars or any
9 tattoos that would help me identify him. His back was
10 unremarkable except for an exit gunshot wound and his chest
11 also showed an entrance gunshot wound, and I saw entrance
12 and exit gunshot wounds on his head.

13 Now, when I first x-rayed his body, what I do
14 while my hands are in my pockets before I start messing with
15 the body, I saw two bullets on the x-ray. One of the
16 bullets looked to be about here, I am indicating my left
17 upper quadrant below the chest in the upper belly, and the
18 other one appeared to be somewhere down where the guts were
19 hanging out. Neither of these bullets traced to a gunshot
20 wound path that killed him. Both of the bullets that killed
21 him seemed to have entered the body and exited the body.

22 Whenever you have a body that's decomposed all
23 your findings are slightly less certain, because as things
24 go bad, it gets harder and harder to tell what's going on.

25 For instance, the gunshot wound to his head, this

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1 is obviously a fatal gunshot wound. I have no uncertainty
2 about that. It enters in his left side of his forehead, if
3 you feel the top of your head if you move your hand down
4 about two and a half inches, and just a half inch left to
5 the midline, that's just where it was. It goes through his
6 skull, right through the frontal lobe there, goes through
7 his parietal bone on the opposite side and through his
8 brain.

9 Now, when I first took the top of his skull off,
10 you know, we take the saw and saw a big circle so I can take
11 the top of his skull off. I see the brain was coated with
12 old blood, it was still dark red. The moment we tried to
13 pull on the brain it was so far gone that it kind of
14 liquified into a heap. We had a pan there waiting to catch
15 it, so we were able to weigh it. I took my knife and made
16 cuts through it and I could see the bloody decomposed rot
17 where the bullet must have passed through, and it goes in a
18 straight line from where the bullet goes in and goes out.

19 So, I say with complete confidence this is a
20 fatal gunshot wound of the head that went in through his
21 forehead, out through the side of his head and went through
22 his brain. If you asked me what examination his brain went
23 through, I don't know, he's starting to rot, going bad.

24 On his chest we have another fatal gunshot wound.
25 This is in the left upper quadrant of the abdomen. I have

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1 to have you realize when you are touching the bottom of your
2 ribs you think of that as the bottom of your chest, but your
3 fingers are actually lying over organs in your abdomen.

4 If you touch your ribs on the right side at the
5 edge of your ribs, they are lying over the entire, on the
6 other side they are lying on the end of your transverse
7 colon and over the back of your spleen. Your lungs are
8 actually higher up than the edge of your lower ribs.

9 I have a bullet goes in here just below the edge
10 of his ribs. Three and three fourths inches left of the
11 midline. It's going from his front to his back, upwards and
12 just a little tiny bit leftward. This bullet goes through
13 his abdominal wall, seems to miss the transverse colon and
14 the adjacent stomach.

15 The reason I say seems to, I am not sure where all
16 of his transverse colon is. His lower half is rotted so
17 much there are things I can't even identify. I am not
18 exactly sure where his transverse colon is. I clearly
19 identified part of it. The rest of it I am just scratching
20 my head. There's a lot of mush in there. I am just not
21 sure.

22 I think this bullet misses his colon and misses
23 his stomach and it goes through the diaphragm which is the
24 dividing muscle between your belly and your actual chest
25 where your lungs and heart are.

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1 The next thing it's going to go through, it goes
2 right past the rib without touching and it goes right
3 through his lung. It starts at the bottom of his lung, goes
4 through the bottom, goes through the middle, goes through
5 the upper part of it and it leaves his back after shattering
6 his fifth rib. The fifth rib is very high up. You know
7 it's going in below the front edge of his ribs and it's
8 going out through the fifth rib and there's a slit-like hole
9 in his back surrounded by a green discoloration in his skin
10 which is consistent with blood that has started to go bad.

11 That bullet caused him to bleed more than a
12 thousand cc's of blood into his chest cavity. Compressed
13 his left lung. That was also a fatal wound.

14 So, I have two bullets, both of which contributed
15 to death, either of which would have caused death alone.
16 One through his abdomen and his lung, one through his brain,
17 so now I know why he died. Someone shot him, twice.

18 But I also have two more bullets that I saw on
19 x-ray. One of these bullets seems to be underneath his
20 guts, which are hanging out of the bottom of his Transected
21 abdomen. This bullet is very odd, but it is completely
22 coated in a mass of fibers. I said in my autopsy report it
23 reminded me of a bezoar, which is a stone animals, but
24 occasionally humans, swallow, stays in their stomach for
25 years and years and gets layers of natural material laid

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1 over it.

2 Of course you are not going to swallow a bullet
3 and have stuff lying over it. It just reminded me of that
4 because it was so peculiar.

5 I have also recovered from homicide bodies bullets
6 that have gone through couches. Remember one in particular
7 in Memphis that had not only the couch upholstery but a
8 piece of the foam from the couch that was carried all the
9 way through the body. When I was describing this bullet at
10 autopsy I said it's covered with matted fibers and reminded
11 of a bezoar, and I don't know if they are natural, I can't
12 rule out upholstery by looking, so I turned that bullet over
13 to other people who can do special trace evidence studies
14 with a microscope and tell me is that covered with stuff
15 from his body or is it covered with upholstery or cloth from
16 something else. Either way, the only reasonable reason for
17 it to be in his guts is that it was shot into him, but I
18 don't have a hole. Now, I have a big ragged edge where the
19 skin is shorter and the muscle sticks out further and the
20 whole thing is going bad, so maybe the hole where it went in
21 got shot away.

22 The final bullet is the most frustrating and
23 puzzling of all. When I was looking at the gunshot wound
24 through his lung I had to take eleven hundred cc's of blood
25 out of his left pleural cavity, some of which I sent on for

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1 toxicology, most of which I examined and discarded, and I
2 cleaned out his left pleural cavity. The pleural cavity is
3 the place inside your body where the ribs go to the spine
4 and the back, talking deep inside your body, and I looked
5 around this whole cavity where I had just taken out all this
6 blood and taken out his lung and I can see the exit hole of
7 the bullet that went through his lung and it was clean.

8 So then I cut a long hole in his diaphragm which
9 is a separating muscle between the lungs and the belly. I
10 cut his esophagus and I started to try to get his spleen out
11 of his belly with care. I put in my autopsy report with
12 care, as your spleen goes bad it's very easy to rip it. As

13 I was trying to get his spleen out a bullet
14 appeared in his left pleural cavity. That bullet had to
15 fall into his left pleural cavity from one of two places.
16 It either fell from his abdomen or it fell out of his
17 esophagus. If it fell out of his esophagus that was short,
18 then it was in his stomach. If it fell out of his abdomen
19 it could have come through his colon. Either way in his
20 condition of dismemberment and decomposition I don't have a
21 path for this bullet. All I know it was deep inside his
22 body somewhere, and it's very frustrating to me as a medical
23 examiner not to provide you with a bullet path, but here I
24 have a bullet that I saw on x-ray that was somewhere deep
25 inside him that fell into the place where his lung was as I

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1 was working on him.

2 Q Now, Doctor Gunther, can you describe for the jury
3 when this second bullet that you found, were you, where were
4 you in William's body, were you deep inside the body, well
5 above where he was cut from the disarticulation?

6 A Yes, I was well above where he was cut. I was actually
7 above the diaphragm, above the spleen, above the kidney,
8 above the transverse colon which was so decomposed I can't
9 identify it, above the pancreas and the bullet falls to the
10 place where the lung was. I lifted up his diaphragm and
11 took a picture there is a little puddle of blood that had
12 re-collected because that was one of those things happens
13 sometimes in forensic, they don't tell you in the books,
14 sometimes you find a bullet. I don't know where it came
15 from.

16 MS. PREZIOSO: Judge, I am handing Doctor Gunther
17 State's Exhibit 1009.

18 Q Doctor Gunther, earlier today you looked at,
19 before the jury came in you looked at a photograph of where
20 you recovered this bullet from, correct?

21 A Right.

22 Q And is that photograph fairly and accurately
23 depicted on the computer disk that you initialled?

24 A Yes.

25 Q Now, Doctor Gunther, when you lifted this torso, I

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1 don't mean you lifted, Ma'am, when the torso was removed
2 from the garbage bags and the suitcase and put onto the
3 gurney you were working on, what happened to the innards of
4 the deceased?

5 A They spilled all over the place.

6 Q And, Doctor Gunther, does that affect your ability
7 to see a bullet path?

8 A I can find a bullet path in a fresh body no matter how
9 I move the body because there's a blood trail. When you
10 decompose to the point you can't recognize certain organs
11 you can't recognize a blood trail. Certainly I have seen
12 bullets move around in bodies when I move the body,
13 particularly if the bullet is loose in blood, you can see it
14 on the x-ray up here and you find it down here and it was
15 floating in the blood. As you drain the blood out it moved
16 down.

17 I have also seen a bullet in an intestine move
18 from one side of the abdomen to the other from the x-ray to
19 the time we found it because the intestines can flop around
20 a little bit. Bullets can move a limited extent in the
21 extent body just from postmortem manipulation, but the blood
22 trail, if it's identifiable, does not move.

23 Q Doctor Gunther, can you explain to the jury what a
24 short return is?

25 A A short return happens sometimes when a bullet

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1 partially exits the body, gets part of the way out and then
2 falls back in. Short returns are unusual.

3 I have seen, I can think of three off the top of
4 my head. I have probably seen ten or fifteen of them in
5 twelve or thirteen years of practice. But sometimes a
6 bullet will not stay in the body and it will not exit the
7 body. It gets most of the way out and then falls back in.

8 Q And in this case is it possible that the back,
9 what you see, what you described as an exit wound, could
10 that be a short return?

11 A It's possible.

12 Q And short returns, they usually happen if the
13 bullet hits, goes through a body and hits a hard surface,
14 correct, ma'am?

15 A Some of the short returns I have seen, there haven't
16 been many, have been where a bullet hit a bone and then hit
17 the skin and turned around and came back in. But actually
18 after bone the thing that is most likely to stop a bullet is
19 the skin itself because the skin is elastic and if the
20 bullet is slowed down by the bone and hits the skin, the
21 skin will bow out and bring it back. So, bone, skin,
22 sometimes a bullet punches through, sometimes it stays
23 inside.

24 Once in a great while, although it's rare, goes
25 part of the way and comes back in in a short return,

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1 probably the skin does most of that, although the bone slows
2 the bullet down.

3 Q And the two bullets that you recovered, they were
4 given to your staff, also?

5 A Yes.

6 Q And that would be Beth Dutton?

7 A I believe so.

8 Q Now, I'd like to move on -- well, before I do, let
9 me ask you, to a reasonable degree of scientific certainty
10 do you know the cause of death of the deceased?

11 A Oh, yeah, I know the cause of death through the
12 deceased. He was shot through the head and through the
13 chest. That's not difficult.

14 Q It was gunshot wounds?

15 A Gunshot wounds through the head and chest. That's the
16 only part of this case that's easy.

17 Q I would like to refer you to May 16th. Do you
18 recall that something happened on May 16th regarding this
19 investigation?

20 A I do, but may I clarify a previous answer.

21 Beth Dutton is not a member of my staff. Beth
22 Dutton is one of the police officers or forensic technicians
23 who picked up evidence from us.

24 Q I apologize. She's with the Virginia Beach Police
25 Department, correct?

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1 A Right.

2 On the 16th we finally got the remaining piece.
3 Now, you have had two pieces of a body show up in suitcases,
4 you know there's another piece of a body, so you are not
5 particularly surprised when it shows up in the final
6 suitcase. May I say this was a matching set of suitcases.
7 There was a small one, a medium one and a large one.

8 We had the small one with the legs and the large
9 one with the upper body down to below the belly button. Now
10 we have the medium suitcase with the belly from below the
11 belly button to the legs above the knees; and this was also
12 badly decomposed, although not quite as bad as the upper
13 body, probably because there were next to no guts left, so
14 there was very little bacteria to accelerate decomposition.

15 Q And you mentioned connective tissue in relation to
16 the thighs, was it, with relation to the knees, was there
17 similarly connected tissue exposed here?

18 A Of course.

19 Q And is there any sort of examination, internal
20 examination that you did with this portion?

21 A Yes, we did. We had already sent some of the blood
22 from his chest off for the lab to tell us if it had some
23 drugs in it. We found that his bladder had not been sawed
24 in half and that the bladder was still intact and still had
25 urine in it, so we sent urine off to be tested.

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1 Other than that, we basically identified normal
2 testes in the scrotum, normal bladder, end of the rectum
3 where it goes out and the sawed surfaces, and I actually
4 took off part of the sawed surfaces with our own autopsy
5 saw, dried them out and kept them in hopes that somebody
6 would be able to examine them someday who knew more about
7 bones.

8 Q Doctor Gunther, can you explain a little more
9 about that to the jury, what portion did you take out?

10 A I took, I don't know that it's in the autopsy report, I
11 don't remember exactly what portions I took out, I know I
12 took at least part of the vertebral column, that's the spine
13 where it was cut off short, and had been sawed in half,
14 because the first job I ever got was in Memphis, spent
15 almost five years there as a forensic pathologist, and I
16 worked there with two forensic anthropologists who taught me
17 a little bit about their field and they were experts that I
18 admired in the field of examining bones after death. So, I
19 knew that people who have that area of expertise, which
20 overlaps mine, I am not a forensic anthropologist can tell
21 me more from the bones than I can tell by looking at them.

22 I know I at least sawed off some of the spine. I
23 don't remember exactly what else I took. It's in my notes
24 somewhere.

25 Q What's the purpose for taking these bone pieces?

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1 A You are going to have an expert examine them and try to
2 tell you is, what kind of injury is there to them. These
3 people can tell you if there was a knife used or a saw. If
4 it was a knife was it a serrated knife like you use when you
5 are cutting bread or was it a smooth-edged knife, a
6 two-edged knife or single-edged knife. This is something
7 they can do.

8 They can also look at bones and try to guesstimate
9 the age and height of the person. Matter of fact, a person
10 in our office with forensic anthropology training who is not
11 yet fully certified who looked at the age, which was all we
12 had, who guessed we had a five, between five-nine and
13 six-two, between thirty-seven and thirty-nine, granted
14 that's an age range. They can tell you about the height,
15 age, gender of the person and the tools that were used on
16 the bones.

17 Q Now, Doctor Gunther, the cutting of this body,
18 can you tell whether it was cut off before death or after
19 death?

20 A It is extremely likely it was after death. The only
21 reason I am only saying extremely likely is the
22 decomposition, but I know what people look like when they
23 have been stabbed, they bleed into their stab wounds. You
24 see, you folks have normal blood pressure. I assume you are
25 all healthy, you have one twenty over eighty, that means

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1 when your heart is beating its hardest it's at one twenty,
2 relaxed it's at eighty millimeters or Mercury that means
3 it's always pushing the blood in your body at one twenty
4 over eighty. If you get a cut, some of that blood gets
5 pushed into the tissue around the cut at one twenty over
6 eighty.

7 So you get spreading blood in the skin around the
8 cut or around a bruise. That's how you get a bruise. You
9 can't bruise a dead body. Their blood pressure is zero. If
10 you knock a dead body off a gurney which hasn't happened to
11 me in many years and you pick the dead body back up it's not
12 bruised because it has no blood pressure to push the blood
13 in it against pressure into the skin. The same way if the
14 dead body should happen to break a small bone when it falls
15 off the table onto the ground and you open up and you look
16 at that rib, there's no blood around the break because they
17 don't have a beating heart, they don't have any blood
18 pressure, the exit wound in William's McGuire's break has a
19 big halo of blood around it in the tissue and that makes me
20 feel that he was alive when that bullet went through him.

21 But the places where his body are cut have no
22 blood in them, none that I can distinguish whatsoever, and
23 so I am fairly confident he was cut up long after he was
24 dead.

25 THE COURT: Ms. Prezioso, maybe this would be a

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1 good time to take a break. Now we've been sitting for about
2 an hour.

3 MS. PREZIOSO: Sure, Judge.

4 THE COURT: All right, ladies and gentlemen, we'll
5 take the morning recess at this point and we'll resume at
6 about 11:30.

7 (Jury excused)

8 THE COURT: All right, ladies and gentlemen, court
9 will recess until 11:30.

10 (Recess)

11 (Court resumes)

12 THE COURT: All right, counsel can we get the jury
13 out? Hearing no objection we'll get the jury out.

14 MR. TACOPINA: If I objected would you sustain it?

15 THE COURT: But I would know it.

16 (Whereupon the jury returns to the courtroom and
17 court resumes)

18 THE COURT: All right, members of the jury, we are
19 ready to continue with Doctor Gunther's testimony.

20 MS. PREZIOSO: May I proceed?

21 THE COURT: Yes.

22 Q Doctor Gunther, I am showing you what's been
23 marked --

24 MR. ROMANYSHYN: State's 1007A.

25 Q State's 1007A, do you recognize what this is a

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1 chart of?

2 A Yes.

3 Q And would this chart assist you in explaining to
4 the jurors where the cut marks, where William McGuire's body
5 was cut up?

6 A Yes.

7 MS. PREZIOSO: Your Honor, the State offers this
8 into evidence.

9 THE COURT: Any objection, counsel?

10 MR. TACOPINA: No, your Honor.

11 THE COURT: All right, the chart will be admitted
12 into evidence.

13 I'm sorry, I didn't get the number?

14 MR. ROMANYSHYN: 1007A, your Honor.

15 THE COURT: 1007A will be admitted in to evidence.

16 MS. PREZIOSO: And with the Court's permission,
17 your Honor, I would ask the witness be permitted to approach
18 the chart.

19 THE COURT: Sure. We do have a laser pointer,
20 though, don't we?

21 MS. PREZIOSO: Your Honor, I am going to ask
22 Doctor Gunther to MARK on the chart where the body was cut.

23 THE WITNESS: Your Honor, may I make reference to
24 my autopsy pictures?

25 THE COURT: Sure.

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1 Q Doctor Gunther, if you would, you described the
2 first suitcase as containing roughly from the knees down.
3 Could you mark on the chart for the jury with the black pen
4 where the cut marks were?

5 A Yes. It's a little longer on the right side of the
6 femur going right through the knee itself and starting lower
7 and rising a little higher here. Uneven on the backs. They
8 don't match perfectly. It's because some pieces were
9 missing. Probably just below the belly button here on the
10 torso. The belly button is the upper piece. This piece is
11 ragged. I think some pieces are missing. I don't know if
12 they were missing because they were chewed up in the cutting
13 process or because they decomposed. A little higher back
14 here.

15 Q Thank you, Doctor Gunther.

16 Now, what I would like to talk to you about next,
17 well, even before I do that, Doctor Gunther, I'd like to
18 show you what's been marked State's Exhibit 30 for
19 identification.

20 Doctor Gunther do you recognize that photograph?

21 A I do.

22 Q What do you recognize it to be?

23 A This is the legs from --

24 Q Again, I'm sorry to interrupt. I ask you make
25 sure the jury not see the photo.

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1 A This is the legs from the knees down inside the
2 suitcase, still wrapped in the black plastic garbage bag
3 with only the very cut ends of the legs partially showing
4 and with our autopsy number on it on a label.

5 Q And does that photograph fairly and accurately
6 depict what the legs looked like inside the suitcases with
7 the garbage bags partially covering them?

8 A It does.

9 MS. PREZIOSO: Your Honor, the State would offer
10 the exhibit into evidence, but we are not going to publish
11 it at this time.

12 MR. TACOPINA: Your Honor, there's no objection
13 except for the fact I think the witness said from the knees
14 down and if that's the case I think that's the wrong photo.

15 MS. PREZIOSO: No, your Honor it's not the wrong
16 photo.

17 MR. TACOPINA: Your Honor, based on our previous
18 conversations I think it's cumulative, and we probably would
19 object, just from the knees down.

20 MS. PREZIOSO: Your Honor, we'll recheck the
21 photo.

22 Your Honor, in the meantime.

23 Q Doctor Gunther, I'd like to talk to you now about
24 toxicology. Did you request a toxicology be done as part of
25 this examination?

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1 A Yes, on blood I got from the left chest cavity next to
2 the lung and on the urine from the pelvis.

3 Q Can you describe why you do toxicology, why you
4 have it done?

5 A Well, some deaths you can only explain by toxicology.
6 You know, if you get a person who has died alone in a house
7 with a suicide note and some empty pill bottles you are
8 pretty sure they died from taking the pills, you have to
9 find out, because every now and then somebody will die from
10 a heart attack before they take the pills.

11 Same if a person dies in a heroin overdose, you
12 have to find the heroin to call it an heroin overdose. We
13 always send toxicology routinely on everyone you autopsy.
14 You never know what drugs they might have in their system
15 and the commonest drug is the one that most affects behavior
16 and that's alcohol.

17 We can't look for everything, though we ask the
18 lab to look for heroin and it's cousins, OxyContin and those
19 types of things, cocaine and alcohol.

20 Q Now, Doctor Gunther, is there such a test that
21 tells you everything that's in somebody's blood?

22 A No. No, there's no test that tells you everything
23 that's in a person's blood. If you want to know if a drug
24 is there you have to ask for it. If you say this person was
25 taking Prozac, I want to know if they were on Prozac --

Gunther-Direct

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1 MR. TACOPINA: I object at this point. This
2 witness is not a toxicologist from my understanding. It's
3 not the appropriate forum for this, so I'll object.

4 THE COURT: Sustained.

5 Q Doctor Gunther, the toxicology reports that come
6 back, are they routinely relied on by you?

7 A Yeah.

8 Q And as part of your job as medical examiner and
9 forensic pathologist do you have a basic understanding of
10 forensic toxicology as well?

11 A A basic understanding, yeah.

12 Q And the screen that was done in this case, was
13 that something that you considered and relied upon in making
14 your conclusions as to cause of death of William McGuire?

15 A Yes.

16 Q What were the toxicology, what was the request,
17 what did you request be tested for here?

18 A I asked for the usual which is cocaine, heroin and
19 other opiates and alcohol.

20 Q And what were the results?

21 A There were no opiates, no heroin, no OxyContin, no
22 cocaine and none of its broken down by-product
23 benzoylecgonine, and there was only a trace of alcohol but
24 that trace is not reliable because the body is decomposing.
25 Sometimes in decomposing people they actually have some

Gunther-Direct

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1 germs in them which make alcohol. So, when you have a lot
2 of alcohol in a decomposed person they were probably
3 drinking. When you have only a trace you don't know if it
4 was real, if it came from bacteria.

5 Q Now, Doctor Gunther I want to ask you, if a person
6 is alive and has ingested a drug, say a sedative that makes
7 the person go into a deep sleep, what's the body process
8 that's going on, if any, relative to that drug?

9 A Well, the drug is effecting the person's brain or they
10 wouldn't be in a deep sleep and probably affecting other
11 organs like his lungs and heart as well. While they sleep
12 the liver and kidneys are metabolizing the drugs getting rid
13 of it. Just like when a person gets so drunk they fall
14 asleep, while they sleep their body ultimately gets rid of
15 the alcohol. When they wake up they are not drunk, they
16 have a hangover. The next day they are not drunk and have
17 no hangover, that is because their body has completely
18 gotten rid of the alcohol, which is a drug like any other
19 drug.

20 Q And as a forensic pathologist have there been
21 times in your career when you have asked for certain drugs
22 to be looked at that were outside of the normal screen?

23 A Yes.

24 Q And are all drugs equally traceable in remains?

25 A No.

Gunther-Direct

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1 Q And can you explain that to the jury?

2 A Drugs that a person's body makes are very hard to
3 trace, like insulin or steroids. Some drugs you can trace
4 in a live person are very hard to trace in a dead person,
5 particularly drugs that fall in the general class of
6 proteins, because proteins break up when a person dies, if
7 their blood clots and unclots. Drugs which are complex
8 organic molecules, like LSD which is lysergic acid
9 diethylamide, are hard to find. Some drugs like cocaine are
10 easy.

11 Q So, not all drugs are equally discernible then?

12 A Not all drugs leave the body at the same rate time.

13 Q Are you familiar with the drug Chloral Hydrate?

14 A Generally familiar, not specifically, I have never had
15 a case of it, that is, I have never known of a case of it.
16 I never asked for it. It may have been present at times and
17 I didn't know it was there.

18 Q But you are familiar with alcohol you said, Doctor
19 Gunther?

20 A I am very familiar with alcohol.

21 Q Can I ask if a person had had alcohol combined
22 with some sedative, say more than twenty-four hours before
23 the person died and perhaps was in a deep sleep, would you
24 expect to still find alcohol in the remains?

25 A No.

Gunther-Cross

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1 MS. PREZIOSO: No further questions, Judge.

2 THE COURT: Mr. Tacopina.

3 CROSS EXAMINATION BY MR. TACOPINA:

4 Q Good morning, Doctor Gunther.

5 A Good morning.

6 Q Doctor Gunther, you talked about in your direct
7 testimony a test that you did when you found that final
8 bullet that you, as you described it, I think you said you
9 took blood out of the left pleural cavity?

10 A Yeah.

11 Q You took eleven hundred cc's of blood?

12 A Yeah.

13 Q And that's just over a liter of blood, correct?

14 A That's right.

15 Q That's a lot of blood?

16 A You imagine a liter Coke bottle full of blood, that's a
17 lot of blood.

18 Q So, you were then asked about blood being allowed
19 to drain, I think you were posed the hypothetical question
20 but once the body is no longer living, the spigot sort of
21 shuts off, right, I mean the blood, when a blood vessel cut
22 the blood will spew out of that blood vessel but it won't
23 replenish itself once the heart is not beating anymore, is
24 that correct?

25 A Absolutely. When you have a dead person and you make a

Gunther-Cross

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1 cut with a scalpel in the skin, the cut is white and yellow,
2 white for the skin, yellow for the fat. It doesn't bleed.
3 If you cut across a big vein in their neck the blood comes
4 out of the vein until it's all come out and then it stops.
5 It can be a considerable quantity when the body was cut in
6 half and they went across the two biggest blood vessels in
7 the body, the aorta and vena cava, a fair amount of blood
8 would have come out, but once it's done the spigot is off
9 and it stops.

10 Q Now, I want to talk to you about your examination
11 of the first suitcase, the one from 5/5/04, May 5th, '04,
12 okay?

13 A Okay.

14 Q In describing that you used the words, the legs
15 were fresh looking, correct?

16 A Right.

17 Q And what you said was, it was like the people that
18 had come from the hospital the day before, correct?

19 A Right.

20 Q Meaning that the people who had come from the
21 hospital the day before are the people that you are saying
22 died the day before, correct?

23 A Right.

24 Q So, the legs you received on 5/5/2004 looked like
25 legs that had come from a person who had died the day

Gunther-Cross

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1 before?

2 A They looked like legs of a person who had died in the
3 hospital the day before, because hospitals take the dead
4 bodies and put them in a cooler. If the person had died in
5 a hot car the day before they would look nowhere near that
6 fresh, and if the person died Friday in the hospital and
7 autopsy on Monday they also would have looked fresh. I
8 can't say it looked like the person who died the day
9 before. They look similar to legs of people who died in the
10 hospital and were put in the cooler the day before or the
11 day before that.

12 Q They were fresh looking?

13 A They were fresh looking.

14 Q Certainly they wouldn't like look legs from a
15 person who was killed six or seven days before that and left
16 in normal temperature above forty degrees?

17 A Definitely.

18 Q Definitely not, right?

19 A Definitely not.

20 Q You mentioned the term connective tissue, Doctor
21 Gunther?

22 A Yeah.

23 Q And connective tissue is anything that connects
24 with one piece of the body to another, correct?

25 A Yeah.

Gunther-Cross

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1 Q And connective tissue could come from a living
2 person or a dead person, right?

3 A Right.

4 Q Connective tissue is not only exclusively coming
5 from a dead person, correct?

6 A Right.

7 Q When you say right, you mean you agree with me?

8 A I agree with you.

9 Q Just a couple more things.

10 This male that you observed, did you ever make a
11 height assessment of this individual?

12 A We made a general height assessment when we put all
13 three of the pieces back together. We had nineteen inches
14 for the legs, thirty-two inches for the torso, and
15 twenty-five inches for the mid section which we called from
16 lumbar vertebrae to knee. Now, let me put that together.
17 Twenty-five and thirty-two is fifty-seven and nineteen is,
18 help me here.

19 Q We are getting help here.

20 A Seventy-six. Those are approximate measurements
21 because he flops when you put him down because he's, the
22 legs are an accurate measure, they are fresh. The upper
23 parts you can subtract or add a couple inches.

24 Q Somewhere between five-ten and six-one?

25 A That sounds reasonable to me. Could be a little

Gunther-Cross

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1 taller. Could be a little shorter.

2 Q Now, I want to talk to you about some of the
3 gunshot wounds that you observed, okay. Let's talk about
4 the one to the head. What you observed was an entry wound?

5 A Yeah.

6 Q And an exit wound?

7 A Yeah.

8 Q And an exit wound means the bullet left the head?

9 A Right.

10 Q And went somewhere else?

11 A Right.

12 Q Like into a wall or someplace, correct?

13 A Right.

14 Q It didn't just dissipate?

15 A I autopsy bodies all the time with entrance-exit wounds
16 and the cops tell me where they find the bullet, sometimes
17 in the wall, sometimes in the floor, sometimes in a dish,
18 sometimes in a pillow. I don't pay attention where the
19 bullet goes when it leaves the body. The bullet -- my
20 concern is the body. The bullet left little tiny pieces of
21 lead in the scalp, trace of some blood, but where it went I
22 don't know.

23 Q Did the cops in this case tell you where it went?

24 A No.

25 Q And that bullet, according to your report, was

Gunther-Cross

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1 never recovered as far as you know?

2 A Right.

3 Q Now, going to the gunshot wound of the torso.

4 Now, the gunshot wound of the torso I think you
5 thought was possibly a distance shot, right?

6 A Yeah.

7 Q Meaning not close range, not against the body?

8 A I couldn't tell if it was a distance shot for sure
9 because I don't have the clothes, that is I don't know if he
10 was wearing clothes when he was shot. If you shoot a person
11 close up and they are naked you will see some spray from the
12 gun on the skin, it's called fouling and stippling. It
13 stops showing at three feet. If the person is wearing
14 clothes, it's all in the clothes and not on the skin. So, I
15 said probably distant shot. To us distant means more than
16 three feet, which may not mean distant to you. It looks
17 like a shot that would be more than three feet away but
18 without the clothes I can never be sure.

19 Q By the way, that also, that torso shot, if you
20 will, the entry shot also had an exit wound as well,
21 correct?

22 A Right.

23 Q Meaning that that bullet from the torso entered in
24 the front and exited in the back?

25 A That's right.

Gunther-Cross

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1 Q And went somewhere else, like the bullet from the
2 head, correct?

3 A That's right.

4 Q And to your knowledge that bullet was never
5 recovered?

6 A No one ever told me if it was recovered but I
7 frequently don't find out if they find out later..

8 Q You then said we also have two more bullets,
9 correct?

10 A Right.

11 Q And those were the bullets that were, in fact,
12 recovered with the body?

13 A Yeah.

14 Q Now, those are separate bullets, those bullets, in
15 other words, did not create the entry and exit wounds in the
16 head and torso, correct?

17 A It definitely did not create the entry and exit wounds
18 in the head. I can't be absolutely sure the bullet I
19 recovered from deep inside the chest did not create, did not
20 exit, was not the same one that went through the lung. It
21 seems likely to me the bullet that went in the abdomen
22 through the lung and out the exit was never recovered, but
23 it's possible that it fell back inside and was the bullet I
24 found inside during autopsy, but I don't know, I don't have
25 a blood trail.

Gunther-Cross

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1 Q But for certain the one in the head was not in
2 that, in any of those suitcases, correct?

3 A Absolutely, the one in the head entered and it exited
4 leaving little pieces of lead wipe at the exit.

5 Q Certainly the one at the torso, the one that
6 entered, what happened with the bullet, it entered and
7 exited as well?

8 A It created an entrance and created an exit. The likely
9 thing it exited, but it could have been a short return
10 bullet that fell back inside.

11 Q The likeliest thing is it existed, correct?

12 A In my opinion the likeliest thing is it exited.

13 Q And, again, to your knowledge where those bullets
14 went, if they left any trace evidence in a wall or anywhere
15 else, is something you don't know, correct?

16 A To know that I would have to be present when the person
17 was killed. I was not present when this person was killed.

18 Q Yes, but, yes, you also told the jury sometimes
19 the police tell you where the other bullets are recovered.
20 They didn't tell you in this case?

21 A That is correct. I have not been told anything about
22 the bullets that left the body.

23 Q And one last thing about the bullets, out of the
24 two bullets that you did recover, one of them had that fiber
25 on it, correct?

Gunther-Redirect

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1 A Right.

2 Q The other one did not, correct?

3 A I described the other bullet as looking pristine.

4 Q Pristine, meaning without any fiber or any fabric
5 on it?

6 A Without any fiber or fabric and not terribly banged up
7 as it passed through the body. All bullets get banged up a
8 little bit. They have dents and so forth. This one in the
9 photograph has little distinction and dent in it. It passed
10 through something but it doesn't have any coating of fibrous
11 and isn't squished, when bullets are squished when they hit
12 the pelvic bone.

13 MR. TACOPINA: Thank you, Doctor.

14 THE COURT: Ms. Prezioso.

15 MS. PREZIOSO: I do have redirect if I can just
16 have one moment.

17 REDIRECT EXAMINATION BY MS. PREZIOSO:

18 Q Doctor Gunther, I would like to show you what's
19 been previously marked State's Exhibit 164 for
20 identification. Do you recognize that?

21 A I do.

22 Q And what do you recognize that to be?

23 A This is a picture I took of the x-ray of, from the
24 bottom of his neck to the edge of where he was cut off, and
25 this x-ray shows a broken rib in the back where a bullet

Gunther-Redirect

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1 smashed through the fifth rib, and it also shows a bullet
2 sitting in the left upper quadrant of the abdomen.

3 Q Is that consistent with approximately where you
4 found that bullet?

5 A It is.

6 Q It is, correct, Doctor Gunther?

7 A It is.

8 Q When Mr. Tacopina asked you, you said it was most
9 likely the bullet exited but it was possible the bullet was
10 a short return from the chest injury?

11 A Yes, that bullet came from deep in his body. Where it
12 came from I don't know. I have one of two possibilities.
13 Either it's a short return which means --

14 Q Doctor, I'm sorry, Doctor Gunther, I don't mean to
15 interrupt.

16 MR. TACOPINA: But you did and I object to her
17 interrupting the witnesses answer.

18 THE COURT: All right, well, I think we ought to
19 let the witness finish the answer.

20 Q I'm sorry, Doctor Gunther, go ahead?

21 A Either it's a short return, which means it went through
22 his lung, started to exit and fell back in; or it's another
23 gunshot that went through the area that the saw later chewed
24 up, through his transverse colon, I can't tell what's going
25 on because it's decomposed, and stopped just underneath his

Gunther-Redirect

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1 diaphragm. When I was tearing his diaphragm open it feel
2 into the place by his lung.

3 Q Either way, the greatest likelihood it comes from
4 a bullet that was shot at his body and entered his body?

5 A Whether it's a short return or a third gunshot wound to
6 his abdomen, I don't know.

7 Q And, Doctor Gunther, earlier today, before the
8 jury came in, you looked at both of these exhibits, I am
9 going to hand you now, we already talked about 09, a CD
10 marked State's 1008 which contains three photos on it and
11 the three photos that it contains --

12 MS. PREZIOSO: Your Honor, may I approach just for
13 a moment?

14 THE COURT: Um-hum.

15 (Following discussion was held at sidebar)

16 MS. PREZIOSO: Judge, I didn't want to put a
17 description on the record because it might be offensive to
18 the jury. It's three photos that have the body parts of all
19 three suitcases laid together. It shows the relative
20 decomposition. It's something I just wanted Doctor Gunther
21 to authenticate. The other CD only had one photo on it. By
22 my saying three photos she'll be able to answer it fairly
23 and accurately depicts what it looks like. I just did not
24 want to put this on the record in open court.

25 MR. TACOPINA: No problem with the authentication

Gunther-Recross

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1 of this.

2 THE COURT: Okay.

3 (Discussion at sidebar concluded)

4 THE COURT: Go ahead, Ms. Prezioso.

5 Q And, Doctor Gunther, the CD with the three photos
6 on it that you looked at this morning, did they fairly and
7 accurately reflect, reflect William McGuire's body at the
8 conclusion of all of your examination -- and I am going to
9 ask you, Doctor Gunther, I apologize, please don't be
10 descriptive, if you can just say yes or no?

11 A Yes, two photos.

12 Q Two photos?

13 A Two photos.

14 Q Thank you for correcting me.

15 And lastly, Doctor Gunther, the body parts that
16 you recovered cut the way you described to this jury and
17 what you observed inside the suitcases and inside the bags,
18 was that consistent with the body being cut where you
19 described, the person who cut it letting the blood drain out
20 as well as could be expected and then putting the body into
21 the suitcase?

22 A Yes.

23 MS. PREZIOSO: Nothing further, Judge.

24 RECROSS EXAMINATION BY MR. TACOPINA:

25 Q Doctor Gunther, as well as can be expected, what

Gunther-Recross

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1 does that mean exactly?

2 A That means to me that if a person cuts a body in half
3 the blood is going to drain out of the aorta and vena cava
4 by gravity. With the spigot off, it's just going to drain
5 out as well as you can expect blood to move when nothing is
6 pumping it.

7 Q With the spigot off. The heart stops, it's like a
8 hose, you turn the spigot off, whatever is in that strand of
9 hose before you shut it off will come out of the hose but
10 nothing else will replenish it, correct?

11 A Right.

12 Q And as you said, you found a little over a liter
13 of blood in one of the cavities, correct?

14 A Yes, but whenever I autopsy homicide victims who have
15 been shot through the chest a lot of blood collects in the
16 chest and that blood has no way to leave the chest except
17 through the gunshot wounds, which are not effective leaks --

18 Q Unless, of course -- I'm sorry.

19 A I am very familiar with finding people who are almost
20 bloodless because they've bled out of other areas who have a
21 large collection of blood in their chest. It's not
22 impossible for a person to be shot, have a big puddle of
23 blood that can't get out and wherever you cut across some
24 other artery that drains like a hose after the spigot is
25 off.

Ward-Direct

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1 Q Right, and certainly if someone wanted to drain
2 all the blood out of a body and had a purpose in trying to
3 get all the blood out of a body, leaving over a liter in
4 that pleural cavity it would not be very effective, correct?

5 A As far as that's within my expertise, it's sort of a
6 little bit out of my area of expertise, I suppose so.

7 Q Okay, great. Thanks. Thank you.

8 MS. PREZIOSO: We're good, Judge.

9 THE COURT: Doctor Gunther, thank you very much.
10 You are excused.

11 THE WITNESS: Thank you, your Honor.

12 THE COURT: Do we have time for another witness?

13 MS. PREZIOSO: I am not sure, Judge.

14 THE COURT: Do you want to check.

15 MR. ROMANYSHYN: It's a relatively short witness,
16 Judge. We may run a little bit long on the direct, I don't
17 know what the cross, if any, will be, it will be John Ward.

18 THE COURT: Why don't we give it a try.

19 MR. ROMANYSHYN: State calls John Ward.

20 J O H N G. W A R D, sworn.

21 DIRECT EXAMINATION BY MR. ROMANYSHYN:

22 Q Mr. Ward, good morning, sir.

23 A Good morning.

24 Q Are you employed, sir?

25 A Yes, sir, I am.

Ward-Direct

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1 Q By whom are you employed?

2 A Currently employed by the Commonwealth of Virginia,
3 Department of Forensic Science.

4 Q And what do you do with the Department of Forensic
5 Science?

6 A I am classified as a forensic scientist, supervisor of
7 the firearms section.

8 Q Do you have an area of specialty?

9 A My area of specialty is the forensic science,
10 discipline of firearms and tool mark examination.

11 Q Would you kindly give the jury the benefit of your
12 training?

13 A I first entered the discipline of firearms and tool
14 mark examination while a member of the United States Army
15 Criminal Investigation Command. Part of my career
16 development was a responsibility of going into the
17 laboratory. I attended and successfully completed a
18 two-year course of instruction in this discipline, certified
19 by the Department of the Army and served from '71 to '72 in
20 Vietnam in our laboratory there. Came back to the United
21 States, became the second chief of the Army Crime Laboratory
22 responsible for all the evidence to be processed. The crime
23 laboratories are responsible for processing and assessing
24 all evidence of DOD origin, including Coast Guard. We are
25 also responsible for training other students in the

Ward-Direct

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1 discipline so when our personnel retire we can replace them,
2 and we had a minor mission with the USAD training foreign
3 nationals in the forensic science discipline of firearms and
4 tool mark examination.

5 I retired from the military in '76, went to the
6 State of Wisconsin, worked for the Department of Justice up
7 there in the crime laboratory near Milwaukee, and in 1981 I
8 had the opportunity to go to Virginia and I have been with
9 that department ever since.

10 I am past president of the Association of Firearms
11 and Tool Mark Examiners which is the only international
12 association representing my discipline, and I am currently
13 the chairman of a training committee responsible for the
14 training manual, the technical procedure manual and
15 glossary.

16 The technical procedure manual is a manual
17 designed to assist laboratories who are starting up or have
18 a firearm section identifying techniques and procedures for
19 evaluating evidence.

20 Q Sir, in your experience approximately how many
21 ballistic examinations have you conducted?

22 A I honestly have --

23 Q Can you give me an estimate?

24 A I have worked, for the past twenty-five years I have
25 worked over two hundred cases a month -- a year, I mean, two

Ward-Direct

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1 hundred cases a year. So, I don't have any idea of how
2 many, it's just --

3 Q Have you ever testified in court before?

4 A Yes, I have.

5 Q You have testified as an expert witness, correct?

6 A Yes.

7 Q Approximately how many cases have you testified in
8 court?

9 A Over five hundred fifty times overall, that's military,
10 Federal, State courts in Wisconsin, and in the Commonwealth
11 of Virginia I have testified a total of those five fifty,
12 four hundred eighty times.

13 MR. ROMANYSHYN: Your Honor, at this time based on
14 his training and qualifications the State would move Mr.
15 Ward be recognized by the Court as an expert in ballistics.

16 MR. TACOPINA: No objection.

17 THE COURT: All right, the Court is satisfied that
18 Mr. Ward, by virtue of his training and experience and there
19 being no objection at this time, is qualified to testify as
20 an expert in these proceedings in the field of ballistics.

21 Ladies and gentlemen, I will remind you of my
22 earlier instructions regarding expert testimony again. Mr.
23 Ward is determined by the Court to be qualified as an expert
24 in those these proceedings.

25 Mr. Romanyshyn, why don't you continue.

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1 MR. ROMANYSHYN: Thank you.

2 Q Mr. Ward, did there come a time when you became
3 involved in ballistic examination of some bullets that were
4 recovered from body parts in suitcases in the Commonwealth
5 of Virginia?

6 A Yes, I was.

7 Q Can you explain for the jury how you became
8 involved in that matter?

9 A The case was originally being worked by Virginia Beach
10 P.D., Police Department and they submitted two bullets for
11 examination. I believe they were submitted in May of 2004.
12 I received them in June of 2004 and Issued a report on about
13 the 25th of June, 2004.

14 Q When you had received these bullets for
15 examination, sir, what is the first step in the process of
16 making your examination?

17 A They are submitted in packages. We make all the notes
18 on those things. The bullets then are processed and cleaned
19 from any hazardous material that may be on them and then I
20 examine them to attempt to identify. When you have bullets
21 what you attempt to do is identify the caliber of the
22 bullet, the type of firearm from which it may have been
23 fired, those type of things that can be done with just two
24 bullets.

25 In this case here there were two bullets that were

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1 identified as wad cutter, they are normally loaded in like
2 .38 Special cartridges. Originally, a wad computer was
3 designed primarily for target shooters. It's a lead bullet
4 weighs about a hundred forty-eight grains, the nose is flat,
5 it doesn't have an o-jive on it like many bullets have, and
6 when it penetrates the target paper for target shooters it
7 makes a nice, nice hole that can be evaluated to determine
8 if there's more than one hole, because target people are
9 very particular about not missing the target. They'll say
10 there is two holes, they can measure and determine. So,
11 it's primarily designed for that purpose and they are fired
12 primarily in revolvers. There are some Derringer's that
13 will fire them.

14 So, in this case here I evaluated these bullets
15 and determined they were .38 Special and they were fired
16 from a firearm having six lands and grooves which were
17 inclined to the right. That means that when the
18 manufacturer produces the firearm they have certain
19 specifications that they have for that firearm. Say it's a
20 .38 Special and consequently they take a piece of stock
21 steel, drill it out for the bore and that becomes the
22 caliber. On the .38 Special or .357 that's about .357
23 inches in diameter. That hole is polished, as in all
24 firearms they run some kind of tool through the barrel that
25 causes lands and grooves to appear. It makes an impression.

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1 Anyway, as that tool is drawn through it's turned
2 to the right or turned to the left, some are right some are
3 left. Those are manufacturer's specifications. We measure,
4 in this case I was able to measure the lands and grooves,
5 determined the number of them and then we have a computer
6 program called a general rifling class characteristics file
7 that will identify for us possible manufacturers of firearms
8 that make barrels consistent with what we found in this
9 bullet.

10 I was able to identify a number of firearms and I
11 issued a report indicating that firearms with a rifling
12 class characteristics consistent with those noted on the
13 three bullets submitted --

14 Q Sir, may I back you up for just a moment.

15 You indicated that you measured things that you
16 referred to as lands and grooves. Can you please explain to
17 the jury what are lands and grooves?

18 A The lands would be, we term land impressions and groove
19 impressions. When you run the bullets through you cause a
20 groove, but on the bullet we call it a land impression. So,
21 you have land impressions and groove impressions, like on a
22 .357 you can have different sizes as long as it reached the
23 number of lands and grooves, the total. So, by measuring
24 those we can tell you what the caliber is. If we didn't
25 have, you know, out of round, you couldn't measure that.

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1 These bullets were not out of round, and you could also
2 determine what the manufacturer might be.

3 Q And you also utilized the term class
4 characteristics, you explain for the jury what a class
5 characteristic is?

6 A It would be, like the number of lands and grooves, the
7 direction of twist and the size of those lands and grooves
8 are class characteristics of a manufacturer.

9 Q And with respect to these bullets that you
10 examined, how many lands and grooves were there?

11 A Six.

12 Q What direction was the twist?

13 A Inclined to the right.

14 Q And did you utilize that information to attempt to
15 determine who may have manufactured the weapon that fired
16 those bullets?

17 A Yes.

18 Q And what procedures did you use to do that?

19 A Really get into the computer program and plug in the
20 data that you have observed from your examination. It then
21 identifies, sometimes you don't get any, sometimes you get
22 maybe one, other times you might get a number. In this case
23 here I think I was able to identify six.

24 Q So, would it be fair to say that manufacturers
25 keep some sort of record of their manufacturing process?

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1 A Well, certainly they do, but this computer program was
2 put together by the Bureau of the F.B.I. and it was the
3 result of major test firing of bullets from various weapons.

4 Q You indicated you were able to determine class
5 characteristics and come up with a list of manufacturers
6 that may have manufactured the weapon that fired these
7 bullets is that correct?

8 A That's correct.

9 Q Can you tell the jury who some of those
10 manufacturers were?

11 A I will try to remember them all. Astra, an outfit
12 called FIE, Hopkins and Allen, High Hunter, Ira Johnson, and
13 Taurus.

14 Now, the list, when I issue these and I give these
15 to police officers they are only an investigative tool.
16 These are firearms that I was able to identify. Are there
17 others, there very well may be, and so if during the course
18 of an investigation an officer would find a firearm from
19 someone that they had a suspect on but it wasn't on that
20 list they shouldn't disregard that. They should send that
21 firearm to the firearm's section and I would eliminate or
22 identify it as a possibility.

23 So, it's a very good investigative tool that we
24 are able to give the departments that we support.

25 Q And the caliber of these bullets was .38 caliber

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1 as a result of your examples, do I recall correctly?

2 A It's .38 class, .38, .357 class bullet.

3 Q Sir, let me show you items that have been
4 previously marked as State's Exhibits 25A and 25B.

5 MR. ROMANYSHYN: Your Honor, I believe those are
6 actually in evidence already.

7 Q Do you recognize those items, sir?

8 A Yes, our laboratory identifying characteristics are on
9 both envelopes. You will notice this is the envelope that
10 the bullet came to me in. After cleaning it and preparing
11 it for examination I placed it in a small envelope and
12 attached it. Both of those are the, my item six on my
13 report and this would be item seven on the report.

14 Q In examining these two bullets, in examining these
15 two bullets were there any characteristics that would lead
16 you to believe they were fired from different weapons?

17 A In fact, that's why I wrote the report that these two
18 bullets were fired from a firearm having six lands and
19 grooves and incline to the right. You look for individual
20 characteristics. There was nothing to indicate there was
21 more than one firearm used, so I wrote the report reflecting
22 that those two bullets were fired from a firearm having a
23 rifle from six lands and grooves inclined to the right.

24 Q You indicated these are wad cutter bullets?

25 A They are.

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1 Q They have a flat head?

2 A That's correct.

3 Q Are they still capable of killing someone?

4 A Certainly, they would be.

5 MR. ROMANYSHYN: Thank you, sir.

6 The State has no further questions of Mr. Ward at
7 in time. Thank you, sir.

8 THE COURT: Mr. Turano.

9 CROSS EXAMINATION BY MR. TURANO:

10 Q Good morning, Mr. Ward.

11 A Good morning, sir.

12 Q Actually, good afternoon.

13 Your experience in wad cutter is not a
14 particularly unusual type of bullet?

15 A It's not unusual at all, no, sir.

16 Q And when you were asked about rifling
17 characteristics, essentially we are talking about six lands
18 and grooves, correct?

19 A Correct.

20 Q And a right twist?

21 A That's correct.

22 Q And you mentioned that in the report you had
23 prepared?

24 A Yes, sir.

25 Q And in your report you mention the six names you

1 had just read off or you just mentioned a moment ago,
2 correct?

3 A I, yes, sir.

4 Q But you also included that certainly those are not
5 the only types of manufacturers that would produce barrels
6 that are consistent with the characteristics that you found,
7 correct?

8 A I don't have the report here, but it says these are the
9 ones, but it's not limited to this list because we cannot
10 say beyond a doubt there's not another firearm out there.
11 There is no way to do that.

12 Q In fact, you indicated there were most likely
13 others?

14 A There very well could be, sir.

15 Q And sitting here today you didn't know how many
16 other manufacturers would have produced the same types of
17 characteristics?

18 A No, sir.

19 MR. TURANO: Nothing further, thank you.

20 MR. ROMANYSHYN: No redirect, your Honor.

21 THE COURT: All right, Mr. Ward, thank you. You
22 are excused.

23 THE WITNESS: Thank you for having me, your Honor.
24 I appreciate it.

25 THE COURT: All right, members of the jury, we are

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1 going to break for lunch at this time. I will ask you to
2 report back to the general jury assembly room at 1:30 and
3 we'll continue with our next witness.

4 (Jury excused)

5 THE COURT: All right, counsel anything before we
6 break for lunch?

7 MR. TACOPINA: No, your Honor.

8 MR. TURANO: No, your Honor.

9 THE COURT: All right, the Court will recess until
10 1:30.

11 (Recess)

12 (Whereupon the jury returns to the courtroom and
13 court resumes)

14 THE COURT: Is the State ready to call its next
15 witness?

16 MR. ROMANYSHYN: State calls Tim Lacek.

17 T I M O T H Y A. L A C E K, sworn.

18 DIRECT EXAMINATION BY MR. ROMANYSHYN:

19 Q Mr. Lacek, good afternoon, sir.

20 A Good afternoon.

21 Q Are you employed?

22 A Yes, I am.

23 Q By whom are you employed?

24 A Hospital Central Services based out of Allentown,
25 Pennsylvania.

1 Q How long have you been with Hospital Central
2 Services?

3 A Since 1987.

4 Q Is Hospital Central Services also referred to as
5 HCSC?

6 A HCSC is known as Hospital Central Service Cooperative
7 is a health care co-op based out of Allentown, strictly
8 health care, we do health care facilities. We don't do
9 hotels or restaurants or anything like that. I work for the
10 laundry division.

11 Q When you say health care facilities, that would
12 include hospitals, doctor's offices?

13 A Acute care hospitals make up a majority of our
14 business, but we do have some rehab facilities as well, some
15 doctor's offices.

16 Q And what capacity are you employed with HCSC?

17 A Currently I am an account representative.

18 Q As an account representative do you have an
19 assigned group of clients?

20 A The group that I have is assigned for the most part.
21 For the most part I am on site at a large group of hospitals
22 and then I do have some other accounts that go along with
23 that.

24 Q And where are those hospitals located?

25 A Morristown, New Jersey; Summit, New Jersey, as well as

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1 Montclair is the majority of my business and or majority of
2 where I spend my time, but I do also have several other
3 accounts in the Morristown area.

4 Q On your list of assigned clients is one of them
5 R.M.A. of Morristown?

6 A Yes.

7 Q That's Reproductive Medical Associates in
8 Morristown?

9 A Correct.

10 Q How long have you been assigned to R.M.A. as the
11 account representative?

12 A Approximately, I'd say back to September of 2003.

13 Q And, sir, if you know, how long has HCSC supplied
14 R.M.A.?

15 A R.M.A. has been under contract with us since 2001.

16 Q Describe to the jury the types of medical supplies
17 you provide to R.M.A.?

18 A The division again is linen and laundry service. You
19 can take a look, it would be the sheeting, the blankets, the
20 gowning that they'll use. R.M.A. does also have some
21 surgical towels and scrub apparel.

22 Q Is HCSC a nationwide company?

23 A We are a regional operator, very large regional
24 operator. Again, we are based out of Allentown, but our
25 service region is basically Pennsylvania and the contiguous

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1 states, Pennsylvania, New York, New Jersey, Maryland and
2 District of Columbia.

3 Q And were you the account representative in 2004?

4 A Yes, I was.

5 Q Let me show you, sir, an item that has been
6 premarked as State's exhibit 955. Have you seen those
7 documents before, sir?

8 A Yes.

9 Q And what do you recognize them to be?

10 A It's our billing and shipping documents back to each
11 account.

12 Q Can you tell from what time period those billing
13 records are?

14 A June of 2003 through June of 2004.

15 Q And who is the client for those medical bills?

16 A Reproductive Medical Associates of New Jersey.

17 Q And did you have an opportunity to examine those
18 records previously, I realize they are quite voluminous?

19 A Yes, I did. I just had the opportunity just a few
20 moments ago.

21 Q And did you have the opportunity to examine the
22 specific, opportunity to examine the specific billing
23 records for April of 2004?

24 A Yes.

25 Q What types of supplies were you shipping to R.M.A.

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1 in April of 2004?

2 A Same items I mentioned before, blankets, towels,
3 sheets, scrub apparel, some lab coats.

4 Q When you say blankets, what types of blankets did
5 you supply R.M.A. with?

6 A One blanket in particular, our item number is 205, our
7 bath blanket.

8 Q And do you recall or can you tell from your review
9 of those records approximately how many of those blankets
10 you shipped to R.M.A. in April of 2004?

11 A Roughly one hundred per week.

12 Q That's each week of the month?

13 A Each week. Again, it's rough numbers. Some weeks will
14 be higher. It's on average. Some weeks a little bit lower.

15 Q Do your products bear markings, sir?

16 A A lot of our, a lot of our products do bear property
17 mark. Our sheeting will have a continuous institutional
18 marking basically an ink mark that runs down with Hospital
19 Central Services Cooperative on it. Other items that were
20 not able to, they will be tagged. Our blankets are tagged,
21 some of our scrub apparel, instead of being a continuous
22 marking will actually have a heat transfer, a stamp on the
23 scrub apparel, It's designated as our property.

24 Q And can you describe, you just mentioned a marking
25 on scrub apparel?

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1 A Sure.

2 Q Can you describe how that marking appears for our
3 jury?

4 A It will say "Property of HCSC" and underneath it it
5 will say never sold.

6 Q Is there a reason it says never sold?

7 A We don't sell the product. It's never for sale. When
8 you see it on the streets and someone was walking with it,
9 it was taken from a facility.

10 Q How would your blankets be marked, sir, if at all?

11 A The blankets are marked with a tag. There's two types.
12 We have many different blankets. Two styles of tags. The
13 tag on our bath blanket, it's a less expensive product so we
14 don't put a lot of investment into the tag, but my companies
15 philosophy is if we are able to put it out to our customers
16 we want to be able to have a notification it is from HCSC,
17 so there is a tag on it. It does not last very long through
18 the process, but there is a tag on it.

19 Q Could you describe for the jury, please, what one
20 of those bath blankets appears like?

21 A Well, it's a hundred percent cotton blanket. What
22 happens, again, with the process it comes out of a bale from
23 overseas, it's actually tan, it's tan when it starts the
24 process, and through the course of time it will actually
25 bleach white.

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1 Another blanket we have is actually our thermal
2 blanket that is a white product to begin with, but the bath
3 blanket we serve R.M.A. actually starts as tan, on the brown
4 side, and does bleach white.

5 Q And does your tag on the blanket bear specific
6 markings?

7 A Yes.

8 Q Could you describe those markings for the jury,
9 please?

10 A The tag on the bath blanket, actually it's a printed
11 tag. It does have our logo which is four arrows pointing
12 in, four arrows pointing out, and then HCSC, and I believe
13 at the top it does say property of, if I'm not mistaken.

14 MR. ROMANYSHYN: Judge, at this time I would just
15 like to retrieve a piece of evidence.

16 THE WITNESS: No problem.

17 MR. ROMANYSHYN: Judge, I'd like to show Mr. Lacek
18 at this time an exhibit premarked as State's 17A. They had
19 no objection. Please correct me if that's an incorrect
20 representation.

21 MR. TURANO: No objection, your Honor.

22 Q Mr. Lacek, directing your attention to the bottom
23 center portion of the blanket. Do you recognize that, sir?

24 A Yes, that's an HCSC blanket.

25 Q How did you recognize it's an HCSC blanket?

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1 A Obviously by the tag that has property of HCSC and our
2 logo.

3 Q Can you describe the tag, when you say logo, can
4 you describe the logo?

5 A Again, I mentioned before, four arrows pointing in,
6 four arrows pointing out.

7 Q Sir, from the appearance of the tag is there
8 anything else you can conclude about that blanket?

9 A When I had the opportunity to look at the blanket, as I
10 mentioned before the blanket starts the process out of the
11 bale as being tan. This blanket is tan, and through the
12 course of time it will bleach white.

13 Q And, sir, you've had an opportunity to examine
14 that blanket before?

15 A Yes.

16 Q When was the last time you examined that blanket?

17 A Just a few moments ago, within the last hour.

18 MR. ROMANYSHYN: Thank you, sir. I don't have any
19 further questions at this time.

20 THE COURT: Mr. Turano.

21 CROSS EXAMINATION BY MR. TURANO:

22 Q Mr. Lacek, you just mentioned a moment ago that
23 the HCSC blankets are a hundred percent cotton?

24 A Right.

25 Q And one of the other distinguishing marks you said

1 these logos, these four arrows, you just spoke about?

2 A Yes.

3 Q You just mentioned you are a very large regional
4 operator?

5 A Operator, um-hum.

6 Q And, again, could you just, the areas that you
7 said that your distribution included, were they --

8 A We service about four hundred seventy clients, majority
9 of the volume by pounds coming from hospitals, but the
10 geographical region is Pennsylvania, New York, New Jersey,
11 Maryland and District of Columbia.

12 Q That would be certainly hospitals, doctor's
13 offices, health care providers in general?

14 A Correct.

15 Q And it would be those types of establishments
16 throughout the states you just mentioned, correct?

17 A Correct.

18 Q Fair to say, New Jersey, you would distribute to
19 hospitals and health care providers throughout New Jersey?

20 A If they are under contract with us, yes.

21 Q If they are under contract, sure.

22 Now, you also mentioned that one of your, your
23 particular accounts was Morristown Memorial Hospital?

24 A Correct.

25 Q And certainly R.M.A., I'm sorry, the HCSC has

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1 R.M.A. as an account, for example?

2 A Correct.

3 Q It has other health care providers as an account
4 you may not be aware of, correct?

5 A That is fair to say, yes.

6 Q How about St. Barnabas Medical System, is that a
7 client?

8 A That is a customer of HCSC.

9 Q Now, in that particular hospital or facility would
10 be located in New Jersey, correct?

11 A Correct.

12 Q Now, these blankets that you talked about are
13 provided to these clients of your's, whether it be a
14 hospital, hospital would be one of the bigger, obviously,
15 clients, correct?

16 A Correct.

17 Q And they would order, many, many towels, or
18 blankets?

19 A Yes.

20 Q And likewise, for instance, a doctor's office or
21 facility would order numerous blankets, correct, depending
22 on the size of the practice?

23 A Proportionately, correct.

24 Q One of the services you provide at HCSC is kind of
25 like a laundry cleaning service?

□□Lacek-Redirect

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1 A Correct.

2 Q So, there's a constant train of blankets, correct?

3 A It's a pulled inventory.

4 Q The actual blankets you provide to various
5 providers are not tagged or specified in anyway, they are
6 not certainly tracked, correct?

7 A To and from a location?

8 Q Yes.

9 A No, it's a pulled inventory.

10 MR. TURANO: I have nothing further, thank you.

11 REDIRECT EXAMINATION BY MR. ROMANYSHYN:

12 Q Mr. Lacek, based on your examination of State's
13 17A your company supplied R.M.A. with these blankets in
14 April of 2004?

15 A Yes.

16 Q And prior to April of 2004 had you supplied R.M.A.
17 with these particular types of blankets?

18 A Prior to April of 2004, yes.

19 Q And, sir, how many clients do you have in the
20 State of New Jersey?

21 A Roughly one hundred, it's over a hundred, say a hundred
22 one.

23 MR. ROMANYSHYN: Thank you.

24 THE COURT: Anything further?

25 MR. TURANO: Nothing, your Honor.

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1 THE COURT: Thank you, sir, you are excused.

2 Next witness.

3 MR. ROMANYSHYN: Your Honor, State calls Peter
4 Burnejko.

5 P E T E R R. B U R N E J K O, sworn.

6 DIRECT EXAMINATION BY MR. ROMANYSHYN:

7 Q Mr. Burnejko, good afternoon, sir.

8 A Good afternoon.

9 Q Are you employed?

10 A Yes.

11 Q By whom are you employed?

12 A The Roselle Tire Company in Roselle, New Jersey.

13 Q How long have you been in that line of work?

14 A It will be twenty-one years in October.

15 Q Sir, did you ever have the occasion to meet
16 William McGuire?

17 A Yes, at an open house.

18 Q I'm sorry, you said an open house?

19 A Yes.

20 Q Would that be for the sale of a home?

21 A Yes.

22 Q And whose open house was it?

23 A It was our open house at 20 Halls Mill road.

24 Q Where is that located, sir?

25 A In Asbury, Warren County, Asbury, New Jersey.

1 Q And the defendant came to your open house, is that
2 correct?

3 A Correct.

4 Q And do you recall when that was, sir?

5 A I can't pinpoint whether it was November, before
6 Thanksgiving or a little bit after.

7 Q And what year was that, sir?

8 A 2003.

9 Q And you had occasion to meet him at that time?

10 A Yes.

11 Q And did he come to the open house alone?

12 A No, he came with the defendant.

13 Q Was there anyone else with him?

14 A An older gentleman, mustache and, I believe it could be
15 one of his relatives.

16 Q And when they came to the open house did you have
17 occasion to speak with Mr. McGuire?

18 A Yes, small talk. Basically, you know, how big the home
19 was, how big the rooms were, and he had come upstairs and
20 said they were nice size rooms. Basic small talk. Nothing
21 other than that.

22 Q What did the defendant do during the open house?

23 A I believe --

24 MR. TACOPINA: Your Honor, I am confused, because
25 I don't think he's mentioned Mrs. McGuire there unless I

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1 misheard Mr. Burnejko. Can I just get clarification? I am
2 not sure he's saying the defendant and William McGuire and
3 switching them.

4 THE COURT: Mr. Romanyshyn, do you want to clarify
5 the question.

6 MR. ROMANYSHYN: I'll back it up.

7 Q Mr. Burnejko, do you know Melanie McGuire?

8 A No.

9 Q Let's back up just a moment.

10 Mr. McGuire came to your open house, is that
11 correct?

12 A Yes, he did.

13 Q Did he come by himself?

14 A No.

15 Q Who was with him?

16 A Mrs. McGuire and a gentleman, probably related.

17 Q Do you see Mrs. McGuire in the courtroom today?

18 A Yes.

19 Q And could you indicate for the record where you
20 see Mrs. McGuire?

21 A Sitting with the defense.

22 MR. ROMANYSHYN: The record indicating at the
23 table, your Honor.

24 THE COURT: So noted.

25 Q Approximately how long did the McGuire's remain at

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1 your open house?

2 A At that time between, approximately fifteen to twenty
3 minutes.

4 Q And what did they do while they were there?

5 A Well, Bill was asking me questions about the home and
6 Melanie stayed with the realtor downstairs and I heard, I
7 guess conversing downstairs which, of course, you can't
8 really make out, but Melanie stayed downstairs.

9 Q Did you have occasion to speak to her at all?

10 A Really just hello, you know, at the introduction and
11 then beyond that probably thank you for coming and that was
12 it.

13 Q Did she ask you any questions?

14 A I don't remember.

15 Q Did Mr. McGuire ask you questions?

16 A Yes.

17 Q And was an offer made on your house?

18 A No, not at that time.

19 Q Was there a realtor involved in the sale of your
20 home?

21 A Yes, well, at this time we were under contract with a
22 realtor.

23 Q Did you have occasion after they left your open
24 house to speak with William McGuire again?

25 A Yes, but that had come after our contract had closed

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1 and during that time I decided to put the home up for sale
2 by owner.

3 Q Do you recall approximately when that was, sir?

4 A Yes, around the second week in January of 2004.

5 Q And do you recall when you next had contact with
6 William McGuire?

7 A Well, about a week after that I put up signs where the
8 home was and on the road leading into the development where
9 we lived. I had gotten a phone call about a week after
10 putting up the signs.

11 Q Did you receive this phone call?

12 A My wife did and then she had called me and said Mr.
13 William McGuire --

14 MR. TURANO: Objection, your Honor, as to hearsay.

15 THE COURT: Sustained.

16 Q Did there come a time when you learned that
17 William McGuire had attempted to contact you?

18 A Yes.

19 Q And in response to that knowledge what did you do,
20 sir?

21 A I called him, and I left a message.

22 Q Did he call you back?

23 A Yes.

24 Q And do you recall the time frame between your
25 leaving the message and his calling you back?

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1 A About an hour or two.

2 Q And without saying directly what was said, sir,
3 what was the result of your conversation with him, did you
4 speak to him at that time when he called you back?

5 A Yes.

6 Q Without saying what was said, what was the result
7 of your conversation?

8 A Well, he wanted to come and negotiate a price.

9 MR. TURANO: Again, your Honor, objection as to
10 hearsay, to the hearsay testimony.

11 THE COURT: The objection is overruled. It's not
12 being offered for the truth of the content.

13 Q Sir, that means you can answer the question.

14 A Thank you.

15 We then had a conversation which we would have a
16 meeting to negotiate a price for the sale of the home.

17 Q Did that meeting ultimately take place?

18 A Yes.

19 Q And do you recall when that was?

20 A Approximately two or three days after the phone call.

21 Q And where did that meeting take place, sir?

22 A Right in our dining room in the home.

23 Q And who attended that meeting?

24 A Mr. McGuire.

25 Q Were you there, sir?

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1 A Yes.

2 Q Was your wife there?

3 A Yes.

4 Q Was Mrs. McGuire there?

5 A No, she wasn't.

6 Q Did Mr. McGuire come to the meeting entirely by
7 himself?

8 A Yes, he did.

9 Q And as a result of this meeting was any agreement
10 reached?

11 A We had a contract form that I had purchased and we
12 discussed the price being five hundred fifteen thousand
13 dollars at the time, and he was to leave a deposit of a
14 thousand dollars on the home.

15 Q So, a contract was signed at that time?

16 A Yes.

17 Q And after that meeting, sir, did you have occasion
18 to have contact with Mr. McGuire again?

19 A Yes, on a professional basis.

20 Q Can you describe what your contacts with him were?

21 A Well, he would call and then if I didn't receive the
22 call I would return the call to his voice mail and answer
23 his questions about letting a gentleman come in to appraise
24 the home, you know, before the closing, or different things
25 about the home, utilities, just everything that goes into

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1 purchasing a home.

2 Q Were there times that you placed calls to him
3 during that time frame?

4 A To give him answers and just basically to reconfirm
5 things that we've talked about, about the home.

6 Q How would you characterize your dealings with Mr.
7 McGuire during this process?

8 A During our process, very respectful, professional.

9 Q Directing your attention to April 28th of the year
10 2004, sir, do you recall that day?

11 A Yes, I do.

12 Q And why do you recall that day?

13 A That was the closing day.

14 Q Did you attend the closing, sir?

15 A No, I did not.

16 Q Who attended the closing on your behalf?

17 A My lawyer did.

18 Q Despite the fact that you didn't attend the
19 closing, did you have occasion to contact Mr. McGuire on
20 that day?

21 A I tried to call Mr. McGuire after the closing, that was
22 approximately 6:30 p.m. to congratulate them and just to say
23 thank you. I spoke to Melanie at the time, and at that time
24 in saying congratulations, I hope you will be happy at your
25 new home, I didn't hear anything, there was silence on the

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1 other end.

2 Q She didn't respond to your congratulations?

3 A No.

4 Q How did you leave that contact?

5 A I just matter of factually said, I'll catch up with
6 Bill a little later.

7 Q Did you attempt to contact Mr. McGuire after that?

8 A Yes, I did.

9 Q On how many occasions?

10 A About four times. On the day of our closing for our
11 home, we had to move everything out and we had a use and
12 occupancy agreement in the contract that would allow us to
13 stay a couple more days past the closing of our original
14 home, and at that point I called in the morning just to let
15 them know logistically that we were making our move and our
16 moving trucks are here now and I am trying to get out by the
17 prescribed time of five p.m. which was the designated time
18 for us to vacate our home.

19 Q Do you recall the designated time on what day,
20 sir?

21 A It's approximately two days, not more than three days
22 after the 28th, after that closing.

23 Q Did Mr. McGuire ever return your calls?

24 A No, no, he did not.

25 Q Had Mr. McGuire ever not returned your calls

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1 previously?

2 A No, he always pretty much made it a point within an
3 hour or two or the next day or so to return a phone call.

4 Q During the course of this process, sir, closing on
5 your home, how many times did you have occasion to leave
6 messages for Mr. McGuire?

7 A Prior to the closing or after the closing?

8 Q All total?

9 A Two or three times a week and then on the day of, we
10 leaving our home, about four times that day.

11 Q And, sir, how would you characterize his responses
12 to your leaving messages?

13 MR. TACOPINA: Objection, your Honor, characterize
14 his responses.

15 THE COURT: Objection sustained. The question is
16 vague.

17 Q Did he return your calls when you left him
18 messages?

19 A Yes.

20 Q And did he return them promptly, what you would
21 consider to be promptly?

22 A I would consider with the busy schedules, and so, yeah,
23 promptly.

24 MS. PREZIOSO: I'm sorry, excuse me, your Honor.

25 MR. ROMANYSHYN: Can I have a moment?

1 Q Sir, let's go back to the time frame before the
2 closing when you would leave messages for Mr. McGuire, did
3 he return them?

4 A Yes, he did.

5 Q And did he return them in a manner that you would
6 consider to be prompt?

7 MR. TURANO: Your Honor, objection, asked and
8 answered, the same question three times now.

9 THE COURT: Objection sustained.

10 Q Sir, after the closing on April 28th of 2004, did
11 you ever receive a return call from Bill McGuire again?

12 A No, I did not.

13 MR. ROMANYSHYN: Judge, I don't have any further
14 questions at this time.

15 THE COURT: Mr. Turano.

16 CROSS EXAMINATION BY MR. TURANO:

17 Q Sir, a few moments ago you characterized promptly
18 as sometimes within a few hours and sometimes within a few
19 days, correct?

20 A I said, yeah, depending on the question, if the
21 question warranted.

22 Q If the question was how promptly did Mr. McGuire
23 get back to you and you said generally sometimes a few
24 hours, sometimes a few days?

25 A Sure, yes.

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1 Q You also said given our busy schedule that was
2 essentially promptly, correct?

3 A Yes.

4 Q You also indicated you placed a call to Mr.
5 McGuire after the closing because you had not attended the
6 closing?

7 A Yes.

8 Q Do you recall specifically the date, I'm sorry,
9 the time of that call?

10 A Approximately an hour or two after the closing,
11 approximately 6:30 in that range, in the evening.

12 Q Now, but it's your recollection it was soon after
13 the closing, whatever the closing was?

14 A Absolutely.

15 Q And it would have been in response to your
16 attorney obviously letting you know that everything went
17 through, correct?

18 A Absolutely.

19 Q And this was certainly a, I guess not unlike many
20 home closings, a closing that had some issues, correct?

21 A Yes.

22 Q Financing issues, right? You have to respond
23 affirmatively, yes or no, just so the Court Reporter can
24 take it down.

25 A Sure, he had, I guess, made a commitment for five

1 hundred fifteen thousand. He called me about two weeks
2 before the closing and said he could not afford to pay five
3 hundred fifteen thousand, and I called my lawyer, Mr. Bundy,
4 and Gary suggested a promissory note for seventy-five
5 hundred dollars because he couldn't pay the full amount, and
6 I said, that's fine.

7 Q But also in terms of during the course of your
8 negotiations with Mr. McGuire, not only was the price an
9 issue, specifically getting the appropriate funding and
10 financing was an issue or at least that's what was explained
11 to you, correct?

12 A That's what he said close to the closing.

13 Q Right, within several weeks of the closing?

14 A Not several weeks, maybe two weeks or so.

15 Q Now, fair to say, sir, that the sum total of your
16 interaction with Mrs. McGuire was extremely limited,
17 correct?

18 A That's correct.

19 Q You talked about an open house that you were
20 present at back in, I guess it was November of 2003?

21 A Correct.

22 Q And most of the time that you spoke with anyone at
23 that particular open house at least with respect to the
24 McGuire's, was with Bill, correct?

25 A Correct.

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1 Q And I believe you said you didn't even remember
2 having any conversation with Mrs. McGuire at the time of the
3 open house other than maybe hello and good-bye?

4 A An introduction and then a good-bye, yeah.

5 Q Again, all of your dealings with respect to the
6 negotiations that you talked about all went through Mr.
7 McGuire, correct?

8 A Yes, correct.

9 MR. TURANO: I have nothing further.

10 REDIRECT EXAMINATION BY MR. ROMANYSHYN:

11 Q Mr. Burnejko, can you describe the home, please?

12 A The --

13 Q The one you sold to the McGuire's?

14 MR. TURANO: Judge, I just object. It's beyond
15 the scope.

16 THE COURT: Sustained.

17 Q You indicated in response to questions that the
18 final purchase price of the house was less than five hundred
19 fifteen thousand dollars, is that correct?

20 A Correct.

21 Q And you are aware of what the house appraised for?

22 A It appraised for, I believe, 500,000.

23 Q And based on the use and occupancy agreement that
24 you described earlier --

25 A Yes.

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1 Q -- did you have any unfinished business with Mr.
2 McGuire after the closing.

3 MR. TURANO: Also, again, beyond the scope of the
4 cross.

5 THE COURT: What's the relevance, Mr. Romanyshyn?

6 MR. ROMANYSHYN: The reason for the follow-up
7 call, your Honor, that he explained earlier on.

8 MR. TURANO: He explained it.

9 THE COURT: I am going to sustain the objection.

10 MR. ROMANYSHYN: No further questions, Judge.

11 THE COURT: Anything further?

12 MR. TURANO: No, your Honor.

13 THE COURT: All right, Mr. Burnejko, thank you
14 very much. You are excused.

15 THE WITNESS: Thank you, sir.

16 THE COURT: Next witness, State.

17 MS. PREZIOSO: Can we approach?

18 (Following discussion was held at sidebar)

19 MS. PREZIOSO: Judge, the next witness we have is
20 Detective Joraskie, he's retired, that was the one with the
21 notes that you had this morning.

22 Here's the other issue, we might have to recall
23 Mr. Burnejko. There is information about where the house is
24 located, things like that, we can put -- he objected,
25 there's more information that we wanted to get.

1 MR. TACOPINA: Why didn't you do it on direct?

2 MR. TURANO: He's here, you had him on direct.

3 MR. TACOPINA: I don't understand, it's stipulated.

4 MS. PREZIOSO: You will stipulate the address of
5 the house?

6 MR. TACOPINA: Sure.

7 Your Honor, with this witness we have those
8 documents we have been looking last night, they were hard to
9 read. We worked them through at lunch. The only thing I
10 noted from these new documents is a large part of, there's
11 not many documents from this witness, only about six in
12 total. One is a report of someone interviewing him and then
13 one is his notes. I don't think the State is going to do
14 this. Being we are up here I might as well front it, I
15 object to him testifying about the same interview that
16 Detective Pickell testified to yesterday. It's cumulative.
17 There were two things did he, Pickell did, he was at the
18 client meeting at the Wilentz firm on 6/2. I object to him
19 being able to testify what she said there. We got that from
20 Pickell already, and the Woodbridge apartment search as
21 well, I object to him being able to testify to that. It's
22 cumulative and any, the other concern, aside from being
23 cumulative, if he has a different recollection to Mrs.
24 McGuire's statements it's going to give the impression it's
25 her inconsistencies as opposed to internal inconsistencies

1 with the cops.

2 I know he did other things. Maybe that's why the
3 State is offering him, but I object. He'll testify to the
4 cumulative nature of the interview that was already
5 testified to at length by Detective Pickell.

6 MS. PREZIOSO: Judge, it's the State's position
7 it's not cumulative. Detective Joraskie's memory, he's a
8 different person, his memory is slightly different from
9 Detective Pickell's and any internal inconsistency Mr.
10 Tacopina is free to argue about. It doesn't mean the State
11 is precluded from introducing the full picture of both the
12 statement and the search of the house.

13 MR. TACOPINA: So, they get to do it twice. Five
14 people, they call five people to say what she said.

15 THE COURT: Well, we are not talking five people,
16 we are talking two, and I don't think that two is so overly
17 duplicative or repetitious. If it gets to be that way I can
18 always address it on specific areas, but I am not going to
19 preclude the State from not allowing him to testify at all
20 about the search or the interview.

21 MR. TURANO: Judge, I don't disagree with that,
22 but in terms of whatever inconsistencies they intend to
23 create through the two witnesses, the State never made an
24 effort to try to suggest or try to show Mr. Pickell's
25 recollection needed refreshing, that he was inaccurate or

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1 that he wasn't remembering anything, they failed to show him
2 anything.

3 THE COURT: Who says that's what they want to do
4 now.

5 MR. TURANO: That's what the argument is, our
6 objection is to have the same witness talk about what he
7 remembers about the statement.

8 THE COURT: There's no prohibition about two
9 officers who are present during an interview being allow to
10 testify. It happens all the time.

11 MR. TACOPINA: To the interview.

12 MR. TURANO: Then we would ask different questions
13 of detective.

14 THE COURT: I can't determine what questions you
15 want to ask but, clearly -- God bless you -- clearly the
16 mere fact that two witnesses testify about the same event is
17 not, by itself, unnecessarily duplicative or repetitious.

18 Now, it may be that in certain areas or if it
19 became five witnesses, that could be, but, there's simply no
20 basis for me to tell the State they can't call a second
21 witness to talk about one interview or one search.

22 MR. TACOPINA: Just when they are done with the
23 direct can we take the afternoon break? I am sure the
24 direct is not that long.

25 MS. PREZIOSO: We may want it before then, but

1 we'll see.

2 THE COURT: I hope we don't want it before then
3 because it would seem to me, and I am going to say this
4 again, that last witness was talking about a lot of things
5 that were hardly relevant to those few things that obviously
6 were relevant, and I am going to ask the State to refrain
7 from just, you know, going on and on with witnesses or we
8 are going to have to really start moving along. There
9 haven't been any objections because I assume the defense
10 does not want to create the impression that they are hiding
11 anything but, again, I will say to the State the Court has
12 an obligation to prevent undue consumption of time and to
13 prevent discussions that intend to either confuse or tire
14 the jury.

15 The more direct examination that the Court allows
16 that is not all that relevant, then the Court has to allow
17 cross examination that's not all That relevant, and when we
18 start getting into collateral issues -- so we have an
19 objection here to the detective's testimony, I am going to
20 allow it with the understanding that we are just not going
21 to rehash every single aspect of all the issues that were
22 previously discussed. There may be some key issues and
23 there may be some things that are in dispute, and I
24 understand that, and that's what I expect is going to be
25 covered. Thank you.

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1 THE COURT: Okay, Ms. Prezioso, ready to call your
2 next witness?

3 MS. PREZIOSO: Yes, your Honor, the State calls
4 Joseph Joraskie.

5 J O S E P H J O R A S K I E, sworn.

6 DIRECT EXAMINATION BY MS. PREZIOSO:

7 Q Good afternoon, sir.

8 A Hello.

9 Q I'd like to call your attention to May of 2004, in
10 May of 2004, sir, where were you working?

11 A Woodbridge Township Police Department.

12 Q And what was your position there?

13 A Detective Sergeant.

14 Q And currently, today, are you still employed
15 there?

16 A No.

17 Q What's your status?

18 A I retired from there.

19 Q Congratulations, sir. When did you retire?

20 A August 1st of this year, I'm sorry of last year, '06.

21 Q Now, going back to when you were working as a
22 detective, what unit were you a part of?

23 A Criminal investigation section.

24 Q And within the Woodbridge Police Department are
25 all the detectives centrally located?

1 A We have the criminal investigation section. We also
2 have detectives in the identification bureau and other
3 detectives in the juvenile division, but they all somewhat
4 come under criminal investigation.

5 Q And specifically now going back to May of 2004,
6 did there come a time when a law enforcement officer from
7 the State of Virginia contacted you about remains being
8 found in suitcases?

9 A That's correct.

10 Q And who was the detective that contacted you, sir?

11 A Ray Pickell.

12 Q And at the time that Detective Pickell contacted
13 you, had the remains been identified?

14 A Not, not a hundred percent.

15 Q Can you please describe to the jury what the
16 status of those remains are from your understanding after
17 you spoke with Detective Pickell?

18 A He explained that the three separate suitcases --

19 MR. TACOPINA: Objection, your Honor.

20 THE COURT: The objection is sustained.

21 Q Detective, I ask you not to say what anybody else
22 said.

23 At the time he contacted you had, did Detective
24 Pickell have an idea of who the remains were?

25 A Yes.

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1 Q And what was he calling you for?

2 A To check on any information I may have in relation to a
3 William McGuire.

4 Q So, what did you do in response to that request?

5 A We have an in-house computer system. I ran that name
6 through our system, being he was a resident of Woodbridge.
7 At that time I learned that there was a temporary
8 restraining order issued against William but had not yet
9 been served to him. From what I learned it was necessary
10 for me to check if he was reported missing. He was not
11 reported missing at that time.

12 Q And do you recall approximately -- withdrawn.

13 Did you respond back to Detective Pickell with
14 that information?

15 A Yes, I did.

16 Q And what was your next action that you took in
17 regards to this case that Detective Pickell was calling you
18 about?

19 A I went to the residence of 2902 Plaza Drive to see if I
20 could either locate Mr. McGuire or his wife.

21 Q And did you?

22 A No.

23 Q Did you leave anything behind, sir?

24 A On my second visit to the home I left my business card
25 in the front door of 2902 Plaza.

1 Q And did you receive any calls back in response to
2 leaving your business card?

3 A Yes. I, upon my next visit back to my office the
4 following day there was a voice mail on my machine in my
5 office from Melanie McGuire.

6 Q And could you please, you can describe this, sir,
7 can you please describe what the message said to the jury?

8 A That she located my business card at her residence and
9 that she could only assume I was in contact with her in
10 reference to the temporary restraining order that she had
11 obtained against William. She provided me with a call-back
12 telephone number which did not work.

13 Q And what happened next regarding this case?

14 A Upon the temporary restraining order was a parental
15 address in Barnegat, New Jersey. Being as I had no way to
16 get her at the phone number she provided I had Barnegat
17 Police respond to the parents address and ask them to have
18 Melanie call me.

19 Q When you said according to the temporary
20 restraining order, how did you get the temporary restraining
21 order, sir?

22 A Since Mr. McGuire lived in the jurisdiction of
23 Woodbridge Township it gets sent to our police department to
24 serve upon him.

25 Q And in response to that did you, what was your

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1 next contact?

2 A After notifying Barnegat to make the notification I did
3 receive a call from Melanie McGuire.

4 Q And did you speak with her, sir?

5 A Yes.

6 Q And what was the substance of the conversation,
7 can you describe that to the jury, please?

8 A She repeated that she was calling, she assumed I had
9 reached out to her, she said in reference to the temporary
10 restraining order that she obtained against her husband.
11 She said, I can't think of any other reason that you would
12 be calling me. I told her at that time that the restraining
13 order was now about three weeks old and we didn't like them
14 to go that long, did she have any idea where I could locate
15 her husband.

16 She told me she didn't know where he was but
17 suggested I look in either Atlantic City, New Jersey or
18 Virginia Beach. I inquired as to why she suggested those
19 two locations and she said because he loved to gamble and he
20 always wanted to live in Virginia.

21 She then went on to tell me that if I was
22 successful in locating William to please let her know
23 because she had obtained a divorce attorney and wanted to
24 file him with divorce papers.

25 Q And you had mentioned, sir, there had been no

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1 missing person's report filed?

2 A No.

3 Q Now, what happened, what was your next contact
4 with the investigation, what did you do next?

5 A I received subsequent calls from Detective Pickell out
6 of Virginia Beach. I updated him on the phone call from the
7 defendant to me and we discussed our next progress in the
8 case. At this point it was Detective Pickell's case, so I
9 was doing what he requested of me.

10 Q And did there come a time -- let me back up for a
11 minute.

12 Detective, you just referred to someone as
13 defendant, and we'll get to it in your testimony, but did
14 there come a time when you met the person you refer to as
15 Melanie McGuire in person?

16 A Yes.

17 Q Sir, I'd ask you to look around this courtroom and
18 tell me if you see that person here today?

19 A Seated in the black jacket, white shirt at the defense
20 table.

21 MR. TACOPINA: We'll stipulate that he knows
22 Melanie McGuire.

23 THE COURT: Okay.

24 Q Now, after you spoke to Detective Pickell about
25 the conversation that you had with the defendant on the

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1 phone, what happened next?

2 A We agreed to have the person that had called Virginia
3 with the possible identification come to his office to make
4 a more detailed attempt to identify Mr. McGuire.

5 Q And would that have been a person that knew
6 William McGuire was attempting to do that?

7 A Yes, yes.

8 Q And without going any further that's a person in
9 Virginia?

10 A Correct.

11 Q Did there, did that meeting ever take place, only
12 if you know, sir?

13 A Yes, it did.

14 Q And after that meeting took place did you receive
15 a subsequent phone call from Detective Pickell?

16 A Correct.

17 Q And was he making a specific request of you?

18 A At this point he was looking for fingerprints of Mr.
19 McGuire for an absolute confirmation.

20 Q And did you have any, sir?

21 A No, I did not.

22 Q Was Detective Pickell able to locate some?

23 A Yes.

24 Q And sometime after that were you notified as to
25 the absolute identification of the deceased that was

1 recovered in the three suitcases?

2 A Yes, I was.

3 Q Now, sir, after that, after the confirmation of
4 William McGuire's identification what was the next action or
5 involvement that you had with the investigation?

6 A To call Barnegat Police Department and ask them to
7 respond to the parent's home in Barnegat to make a death
8 notification.

9 Q Can you explain to the jurors, please, detective,
10 what is a death notification?

11 A In New Jersey under Attorney General Guidelines, if a
12 family member is to be advised of the death of someone in
13 their family it cannot be done by telephone, it must be done
14 in person by, preferably, two police officers, that is done
15 because it's unknown how the person receiving the news is
16 going to react medically, not like to, we need to be there
17 for that purpose to advise them. Also, to assist them at
18 that point with any questions they may have.

19 I could not do that over the phone for that
20 reason, so I had Barnegat Police do that for me.

21 Q And did you receive confirmation from Barnegat
22 that the notification had taken place?

23 A Correct.

24 Q Moving ahead, what was your next action or contact
25 involving this investigation?

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1 A Detective Pickell and I arranged for him and his
2 partner to respond to New Jersey to begin the investigation
3 up here.

4 Q And when did Detective Pickell and his partner
5 come up to New Jersey?

6 A That would be the first of June of '04.

7 Q And can you describe, did you meet with him on
8 June 1st?

9 A Yes.

10 Q And did you, together with Detective Pickell and
11 Detective Pickell's partner, did you do anything that day on
12 June 1st, together?

13 A Well, obviously at that point we continued discussing
14 the next steps that we wished to take in the investigation
15 which --

16 Q I am going to ask you not to repeat what anybody
17 else said. What did you do?

18 A At that time we responded to the area of 2902 Plaza
19 Drive for the Virginia detectives to get a visual bearing of
20 what the home looked like. We met with the superintendent
21 of the complex at that time. He advised us that the
22 apartment was empty.

23 MR. TACOPINA: Objection.

24 THE COURT: Sir, again, please refrain from
25 repeating hearsay.

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1 THE WITNESS: Okay.

2 THE COURT: Just try to answer the question to the
3 best of your ability.

4 Go ahead, Ms. Prezioso.

5 Q Detective, did you go with Detective Pickell to
6 certain interviews in New Jersey?

7 A Yes.

8 Q And I want to call your attention specifically to
9 June 2nd, 2004. Did there come a time when you went to the
10 Wilentz firm, sir?

11 A Yes.

12 Q And can you describe to the jury who was there
13 with you?

14 A Detective Pickell, Detective, I believe it's Shattuck
15 is the pronunciation, the Virginia Beach partner of
16 Pickell. An attorney named John Hogan and an attorney named
17 Risa Kleiner.

18 Q Now Risa Kleiner and John Hogan are members of
19 which firm?

20 A Wilentz.

21 Q Can you describe to the jury what took place at
22 the Wilentz firm?

23 A We had an appointment to interview Mrs. McGuire at
24 that, on that day.

25 Upon our arrival we were placed in a waiting area,

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1 met with a private detective that is employed by Wilentz met
2 with us. We learned it was going to be a little bit of a
3 delay because Mrs. McGuire, at that point --

4 MR. TACOPINA: Objection, your Honor.

5 THE COURT: Sustained.

6 Q You were told there was going to be a delay, sir?

7 A Yes.

8 Q Did the interview eventually happen?

9 A Yes, it did.

10 Q And can you describe the interview to the jury,
11 please?

12 A Mrs. McGuire entered the interview room. The attorneys
13 were with her and Detective Pickell began the questioning.
14 Detective Shattuck also asked some questions at different
15 points. I asked questions directly of Mrs. McGuire.

16 Q And would you describe to the jury, please, what
17 the defendant told you that day.

18 A As far as my questions or in totality?

19 Q Totality, what you heard, sir.

20 A That she repeated the information that there was a
21 fight the evening of the closing of their home that they had
22 just purchased that day, which I believe was April 29th of
23 '04. After the closing of the house they went back to their
24 condominium, apartment, whatever it was referred to on Plaza
25 Drive and subsequently an argument developed where Bill and

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1 her argued about the home they just bought. She states that
2 Bill took a dryer vent-type of cloth, things you put in the
3 dryer, and he pushed it into her mouth. She locked herself
4 in a bathroom, I believe she said on the first floor of the
5 home and she could hear Bill showering in a different
6 bathroom.

7 Subsequently, he told her she would have to advise
8 the kids they would never see their father again because of
9 her, and he left.

10 Q Go ahead, what else did she tell you, sir?

11 A She was asked by myself if there were any guns in the
12 house, she said no. I asked if there was, a second
13 follow-up question, I said is there registered-type of guns,
14 more so hunting weapons as opposed to small guns, and she
15 said no to that as well.

16 She was questioned about the Pennsylvania plates
17 being on her husband's vehicle because they lived in New
18 Jersey. She said that was for insurance purposes, her
19 husband had a problem with points, she said. Asked about if
20 she had a three piece matching set of suitcases, she said
21 no. She said they had some mismatched pieces but nothing as
22 far as a matching set.

23 Q Was there anything else you remember, sir?

24 A There's other things I am just not recalling at this
25 moment but we talked for some time.

1 Q Is there anything that would refresh your
2 recollection, sir?

3 A My supplemental investigation report probably would.

4 Q One moment, please.

5 MR. TURANO: Can I see it?

6 MS. PREZIOSO: I am going to get the exhibit.

7 One moment, Judge.

8 Judge, can I supply the exhibit number in a
9 moment? I have the bate stamp number I've given to defense.

10 THE COURT: Why don't we take the afternoon recess
11 then and we can get the exhibit number at that time.

12 Ladies and gentlemen, we'll take the afternoon
13 recess and we'll resume at three p.m.

14 (Jury excused)

15 THE COURT: Ladies and gentlemen, we'll recess
16 until three p.m.

17 (Recess)

18 (Court resumes)

19 THE COURT: Ready to continue?

20 MS. PREZIOSO: Yes, sir.

21 THE COURT: Bring the jury in.

22 (Whereupon the jury returns to the courtroom and
23 court resumes)

24 THE COURT: All right, please be seated.

25 Ms. Prezioso, will you continue.

1 MS. PREZIOSO: Yes, Judge the State is handing the
2 witness State's Exhibit 619, a copy of Detective Joraskie's
3 report.

4 Q Sir, I'd ask you to read through that and when
5 your recollection is refreshed look up.

6 A Okay.

7 Q Do you recall anything else about what the
8 defendant told you during the conversation you had with her
9 at the Wilentz firm?

10 A Yes, in reference to Bill's personal, his habits and
11 whatnot, she stated that he was able to piss people off
12 easily, said he was a jerk, basically that at work he was
13 unliked, that his boss was looking to fire him and, in
14 general, that he wasn't a friendly person or a happy
15 person.

16 The general message she conveyed to me at that --

17 MR. TURANO: Objection.

18 MR. TACOPINA: Objection.

19 THE COURT: I'll sustain the objection.

20 Q Anything else, sir?

21 MR. TURANO: Objection, your Honor, to the
22 question, anything else. It's vague. I don't know what the
23 District Attorney is referring to.

24 THE COURT: The question is vague.

25 Please refrain the question.

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1 Q Had she said that her husband had been in contact
2 with her since he left?

3 A She told me that there was --

4 MR. TURANO: Objection, your Honor.

5 THE COURT: Excuse me just a minute, sir.

6 MR. TURANO: Your Honor, just objecting to the
7 leading nature of the questions.

8 THE COURT: Please refrain from leading the
9 witness.

10 Q Did she tell you anything else about her husband,
11 sir?

12 A She did state that there was a, on her answering
13 machine at her house at 2902 Plaza there was a missed call
14 from his cell phone to the house.

15 Q Now, Detective Joraskie, how long would you say
16 you were speaking to the defendant that day at the Wilentz
17 firm?

18 A I would say at least a half an hour.

19 Q And did you have an opportunity to observe her at
20 that time?

21 A The entire time.

22 Q Can you describe her demeanor during the course of
23 the interview to the jury?

24 A She seemed upset and angry, specifically when I would
25 ask questions of her, she seemed to be angry with me for

1 asking those questions. She seemed upset but not
2 emotionally upset. More of a, didn't want to be in this
3 situation.

4 Q Now, when you say she was especially angry at you
5 when you asked her certain questions, which questions were
6 you asking her that seemed to evoke a response?

7 A I asked her to repeat the fight that they had the
8 evening of his departure and at first her divorce attorney
9 said no, then her divorce attorney said okay, and the
10 defendant repeated her version of the fight for me. I saw a
11 difference in what she had told me on the phone in that she
12 no longer stated that he had pushed her against the wall and
13 struck her in the face. She left that physical part of it
14 out.

15 Q And when you say she seemed angry, can you
16 describe what gave you the impression she was angry?

17 MR. TACOPINA: Judge, objection, asked and
18 answered, same question.

19 THE COURT: Objection sustained.

20 Q Detective, did you obtain any records after that
21 interview, did you obtain any records pertaining to either
22 the defendant or Mr. McGuire?

23 A Yes, I obtained what is called communication data
24 warrants for Mr. McGuire's EZ-Pass and for his Nextel cell
25 phone.

1 Q And were you able to determine from a review of
2 the Nextel or of that, whatever type of phone it was, it was
3 a Nextel, sir?

4 A I believe it was a Nextel.

5 Q When was the last time a call was placed to that
6 phone?

7 A Without seeing the records I would not be able to state
8 that.

9 Q All right, we'll move on.

10 On June 5th of 2004 after the Virginia people were
11 back in Virginia did you do anything regarding this
12 investigation?

13 A Yes, I did.

14 Q And what did you do?

15 A I responded to Brooklyn, New York and met with a
16 Detective Donald of that precinct, I think it was the 86th
17 Precinct, I am not positive in that. My reason for going
18 there was to pick up black garbage-type bags, plastic bags
19 that he had in his possession.

20 Q And did you eventually give those bags to someone?

21 A To the Attorney Generals Office, Division of Criminal
22 Justice investigators.

23 Q Do you remember which investigator you gave them
24 to?

25 A No, I don't.

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1 Q Now, I'd like to go back. After you went to the
2 Wilentz firm and you spoke to the defendant did you have an
3 occasion to respond to 2902 Plaza Drive?

4 A Yes, we did.

5 Q And at that time the Virginia detectives were
6 still here, correct?

7 A Correct.

8 Q I had skipped over that with my last question, and
9 I apologize.

10 Going back to that, do you recall what day you
11 went to the apartment?

12 A It was the evening after the interview with, at the
13 Wilentz firm, so it would be the 2nd, 2nd of June.

14 Q The interview was on the 2nd. Do you want to
15 refresh your recollection, sir, and take a look at what day?

16 A Sure.

17 Yes, June 2nd.

18 Q And on June 2nd what, who was at the apartment
19 with you?

20 A The two Virginia detectives, myself, and from my
21 identification bureau I had Sergeant Richard Bodner,
22 Detective Mark Saldutti and Detective Chris Kapinos.

23 Q And what were you at the apartment to do?

24 A To conduct a test of the interior of the structure for
25 blood using a chemical known as luminal.

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1 Q And did that, in fact, occur?

2 A Yes.

3 Q And were you, where were you when the luminal
4 testing was going on?

5 A When the actual test was performed I was at the front
6 door outside on the porch area.

7 Q And what's the reason for being outside, sir?

8 A There's an unknown feeling in the police and science
9 world about luminal, it's alleged to cause cancer. The
10 officers that were inside had protective gear on. I did
11 not, so I stayed out.

12 Q Before the luminal test was performed, did you
13 have the opportunity to walk through and look at the
14 apartment?

15 A Yes.

16 Q Can you describe for the jury what was the
17 condition of the apartment?

18 A It was completely vacant. Immaculately cleaned. It
19 had hardwood floors on the main living area. They were
20 extremely clean and shiny. The walls were all freshly
21 painted white. There was no furniture in the house at all.
22 There was carpeting in the basement. Most of the house was
23 hardwood floors, very clean.

24 Q And I want to direct your attention to the second
25 floor. Did you have occasion to go into the bathrooms on

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1 the second floor?

2 A Yes.

3 Q And same question, sir, can you describe the
4 condition of the bathrooms to the jury, please?

5 A Spotlessly clean. Everything in this house was clean.

6 Q I'd like to move forward now, after June 5th. We
7 talked about on June 5th you had a meeting with Detective
8 Donald in New York City and you picked up some bags from
9 him. What was your next involvement with the investigation?

10 A Conducted some more interviews of the adjoining
11 neighbors, excuse me, around 2902 Plaza Drive.

12 Q And did you learn anything from those interviews,
13 anything significant, sir?

14 A No.

15 Q Without repeating what anybody said, did you learn
16 anything significant?

17 A No.

18 Q Incidentally, can you describe the complex where
19 2902 Plaza Drive is?

20 A The majority of the residences there are single-floor
21 apartment style with three in total, but each person owns
22 one floor. Some of the end caps such as the McGuire
23 residence are all three floors. They are more like a
24 townhouse. Not a lot of children in the complex. It's more
25 working couples that leave for the day.

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1 Q And are these rental apartments or condos or a
2 combination, if you know, sir?

3 A The area where the McGuire's lived was rental.

4 Q Now, after conducting the canvasses, the canvass
5 when you went to interview the neighbors, after that what
6 was your next step in the investigation?

7 A I reached out to the New Jersey State Police and
8 requested the Casino Control Commission to check for any
9 activity of Mr. McGuire at the casinos in Atlantic City.

10 Q And did you get a response back from New Jersey
11 State Police on that?

12 A Yes, I did.

13 Q And did you learn anything about Mr. McGuire's
14 gambling?

15 A They didn't have much of anything related to activity
16 as far as from any kind of comp cards or those V.I.P. cards,
17 they didn't have anything of that nature. As I recall the
18 last comp room that had been provided to him was in October
19 of '03.

20 Q So, he did gamble, and he did have a comp account,
21 for lack of a better word, with certain casinos?

22 A Yes.

23 Q Did you learn whether or not he was in debt?

24 A I didn't learn of any debt, no.

25 Q Now, after checking with Atlantic City on the

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1 gambling, did you do anything further between the time
2 period of say June of '04 and in the fall of '04, anything
3 between that?

4 A As far as investigation, no.

5 Q And, again, the investigation was still in
6 Virginia at that time, sir?

7 A With Detective Pickell, yes.

8 Q Now, during that intervening time did you have any
9 significant contacts with either the defendant or anyone in
10 her family or anyone related to the victim?

11 A None with the defendant. The victim's sister called me
12 repeatedly at least twice a week.

13 Q And what's that sister's name sir?

14 A Cindy Ligosh.

15 Q Now, what happened in the fall of '04 with the
16 investigation?

17 A I was notified that Division of Criminal Justice of the
18 Attorney Generals Office was going to begin the
19 investigation and I was requested to come to that facility
20 in Trenton to be part of the beginning of the investigation
21 again.

22 Q And the first meeting took place in Trenton you
23 said, sir?

24 A In Trenton.

25 Q And what, following that meeting what was the next

1 major activity in the investigation?

2 A A wire was placed on phones owned by the defendant.

3 Q And were you involved in any of the investigation
4 surrounding the beginning of the wire, sir?

5 A I placed some calls to friends of the defendant in an
6 effort to set up interviews with them.

7 Q And is there a phrase that police have for what
8 you did, sir?

9 A The reason it was done was to initiate or in the
10 attempt to initiate calls from those people back to the
11 defendant as far as --

12 Q If you know, sir, did your activity in calling
13 people and setting up interviews, did it stimulate the wire,
14 sir?

15 A Yes, it did.

16 MS. PREZIOSO: No further questions, Judge.

17 CROSS EXAMINATION BY MR. TURANO:

18 Q Not only intended to start, sir, incriminating
19 comments, it's also to start incriminating statements,
20 right?

21 A Okay, I'm agreeing with you.

22 Q Sir, you've been retired a number of months. How
23 long were you with the Woodbridge Police Department?

24 A Twenty-five years.

25 Q And, obviously, you prepared, you prepared a

1 statement in this case, correct, or a report, rather?

2 A A report.

3 Q Of your investigation, right?

4 A I wouldn't really call it an investigation. I call it
5 an assist for Virginia Beach, assist to their investigation.

6 Q And it was actually marked, I think it was
7 referred to as State's Exhibit 619, the document in front of
8 you, right?

9 A Yes.

10 Q Bottom line, officer, is that this is, obviously
11 you prepare reports or statements or whatever you want to
12 call it, because it's something that you are intending to
13 rely on at a later date?

14 A Correct.

15 Q Obviously, your recollection two or three years
16 removed isn't going to be that strong as it is at the time,
17 correct?

18 A Correct.

19 Q And, obviously, in your experience you are trained
20 to prepare reports and you understand the importance of
21 report writing, correct?

22 A Yes, sir.

23 Q Now, you testified previously, or a few moments
24 ago, you were asked a question with respect to or I think
25 what you said is that you asked a question of Mrs. McGuire

1 whether she had any guns, do you recall that?

2 A Yes, sir.

3 Q And that, I assume, was a question you asked
4 because you viewed it as an important question, correct?

5 A Correct.

6 Q And the response would, likewise, be an important
7 response?

8 A Yes, sir.

9 Q And, sir, certainly the response that you gave
10 here in court is not anywhere contained in your report,
11 correct?

12 A That's correct.

13 Q So, you didn't think that that particular response
14 was important enough to, important enough to ask, but you
15 didn't think it was important enough to put in your report?

16 A I disagree it wasn't important enough. I, obviously,
17 should have. I believe at the time I was probably feeling
18 that Detective Pickell was going to do that.

19 Q Well, sir, have you had an opportunity to review
20 Detectives Pickell's report in connection with your
21 testimony here?

22 A Not recently.

23 Q You would suspect Mr. Pickell, if it was something
24 articulated or discussed, you would expect he would have
25 that in a report, correct?

1 A Correct.

2 Q And you would expect him to testify about that if
3 that was something that was discussed on the 2nd, June 2nd
4 of '04?

5 A Yes, sir.

6 Q And, again, you would expect it to be in your
7 report?

8 A Yes.

9 Q Now, how were you able to, let me back up a
10 second.

11 Your first contact with Detective Pickell from
12 Virginia Beach was to essentially help him or help Virginia
13 Beach get some intel on William McGuire, does that sound
14 right?

15 A His contact to me was first and it was to see if I had
16 any information on William McGuire, yes, sir.

17 Q And the information you had certainly was there
18 was an outstanding TRO?

19 A Yes.

20 Q Anything else on Mr. McGuire, anything else come
21 back?

22 A The only other thing that came back, sir, was about a
23 year prior a theft from his motor vehicle, what we call an
24 incident report. That was the only other paperwork we had.

25 Q How were you able to get a fingerprint?

1 A I never got the fingerprint.

2 Q Do you know if anyone did?

3 A Virginia Beach did.

4 Q Now, again, when I say about the fingerprint, I am
5 not referring about the fingerprint from Mr. McGuire's
6 remains, I am talking about you matched it up to a
7 fingerprint in a computer, correct?

8 A Yes.

9 Q And there was nothing you saw in the course of
10 getting intel that would have indicated why there was a
11 fingerprint in the computer system?

12 A As I stated, my records check in Woodbridge was with
13 in-house checking not within State or Federal agencies.

14 Q Now, you participated in, I think you said, a
15 thirty-minute conversation, in fact, can I invite you just
16 to look at your report, you testified it was a thirty
17 minute, thirty-minute conversation at the Wilentz firm,
18 correct?

19 A I would say approximately thirty minutes.

20 Q And during that thirty-minute conversation you
21 certainly participated in asking questions, correct?

22 A Yes, sir.

23 Q And you say that you sensed some degree of
24 hostility towards some of the questions you were asking,
25 correct?

1 A Questions I was asking as well as the overall being
2 there.

3 Q Specifically, you testified on direct that the
4 hostility seems to be directed at some of the questions you
5 had asked?

6 A Certainly.

7 Q You had a conversation, you had, I guess, a number
8 of conversations or at least one conversation prior to June
9 2nd, correct, with Mrs. McGuire?

10 A Over the phone, yes.

11 Q And during the course of your conversations is it
12 fair to say that you made some characterizations about what
13 you believed to be -- let me backup.

14 I am talking about on the 2nd, you made some
15 characterizations about, for instance, the offices that the
16 Wilentz firm had, correct?

17 A I'm not sure.

18 Q Specifically, you made some references to Mrs.
19 McGuire about paying a great deal of money for the Wilentz
20 law firm. Do you recall having conversations making those
21 statements?

22 A Not at all, sir.

23 Q Now, what about making comments with respect to
24 the degree of abuse that she alleged, basically minimizing
25 the fact she was slapped or pushed up against the wall, did

1 you make any comments about that?

2 A Absolutely not. In fact, she failed to mention being
3 slapped in that interview.

4 Q Now, again, Detective Pickell was the lead
5 investigator, right?

6 A Correct.

7 Q And you were aware that Detective Pickell
8 testified, you are aware he testified yesterday, correct?

9 A You are asking did I hear him testify?

10 Q Were you aware that he did testify?

11 A Yes.

12 Q You were told that, right?

13 A Yes.

14 Q So, obviously, his recollection of interviews and
15 events would be certainly viable, would be correct
16 recollections, would you agree with that?

17 A I would hope so.

18 Q Certainly he had an interest in gathering
19 information and certainly taking down what Mrs. McGuire said
20 in those interviews, correct?

21 A I would hope.

22 Q And were you present during any of the interviews
23 that Mr. Pickell had or Detective Pickell had and other
24 members of law enforcement from Virginia Beach had on the
25 day when they executed, not executed, when they went in and

1 searched the storage facility, were you aware of any
2 conversations that took place there?

3 A I am aware of conversations, but I was not present.

4 Q That's the question, you weren't present?

5 A No.

6 Q Now, you understand, obviously, that Mrs. McGuire
7 volunteered, consented to speaking to you on the 2nd,
8 correct, June 2nd, '04?

9 A Yes.

10 Q Certainly there were no parameters placed on the
11 conversations, correct?

12 A Placed by who, sir?

13 Q You weren't told what you could ask or what you
14 couldn't ask beforehand, right?

15 A No.

16 Q She answered your questions?

17 A Yes.

18 Q She answered Detective Pickell's questions?

19 A Um-hum.

20 Q Likewise, she answered your questions during your
21 phone conversation you had prior to June 2nd, correct?

22 A Correct.

23 Q Likewise, you have no reason to believe she didn't
24 answer any of the questions that Detective Pickell put forth
25 to her during the subsequent meetings he had with her?

1 A I have no knowledge.

2 THE COURT: Mr. Turano, you know that this
3 detective couldn't possibly answer that question.

4 MR. TURANO: I'll move on.

5 Q Now, originally Detective Pickell came up with
6 someone else from Virginia Beach on June 1st, correct?

7 A Yes.

8 Q And one of the things you did is you took them to
9 the apartment on Plaza Drive, correct?

10 A Yes.

11 Q And you drove around the area just to kind of show
12 them the scenery and where the apartment was?

13 A Yes.

14 Q Now, on that date, though, you did not conduct a
15 canvass of the area, did you?

16 A No.

17 Q And obviously, given your experience in law
18 enforcement you would expect that that would be a
19 significant thing to do, right, conduct a canvass?

20 A I believe that at that point the decision was made to
21 hold off until we had a chance to interview Mrs. McGuire and
22 her attorney the following day.

23 Q And that was on the 2nd, right?

24 A Yes.

25 Q And you testified that at some point in time,

1 though, you did make some inquiries around the apartment
2 complex, correct?

3 A Yes.

4 Q And when did that occur?

5 A Throughout the following several days.

6 Q And I believe the question was, did anything
7 significant result from those inquiries and responses, no?

8 A Correct.

9 Q Now, obviously, you asked questions about whether
10 if anyone heard any gunshots, correct?

11 A Correct.

12 Q You asked questions whether anyone heard any, any
13 other noises, correct?

14 A What do you mean by other noises, sir?

15 Q Any commotions or power tools or anything like
16 that, correct?

17 A I never specifically asked anybody about power tools.
18 In general the questions were, did you hear any
19 disturbances?

20 Q But, clearly, if there were any gunshots, you
21 asked that question, right?

22 A Right.

23 Q And you asked, obviously, if anyone saw any
24 suspicious activity, if they saw something?

25 A Sure.

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1 Q People coming and going, right?

2 A Correct.

3 Q And the answers were no, right?

4 A As far as what they felt suspicious, they said no.

5 Q Obviously they would -- I'll move on.

6 Now, you briefly described the configuration of
7 this apartment complex. I just want to touch on that a
8 little bit.

9 The particular unit that the McGuire's shared had
10 a number of other units within that structure, correct?

11 A Their unit was, I guess the best way to explain it
12 would be an end cap, meaning there's multiple glass doors
13 that end up to six apartments, three on the left, three on
14 the right, all one floor apartments. Then at the end of
15 that structure are two end caps which are all three floors
16 more like a townhouse.

17 Q One end cap would be one residence which is where
18 the McGuire's live. The other side of that structure would
19 have another end cap where another family would live?

20 A Correct.

21 Q Did you speak to anyone in that other end cap
22 unit?

23 A Yes.

24 Q Those are the people who said they had no
25 information, heard nothing suspicious, saw nothing

1 suspicious, right?

2 A Yes.

3 Q And you said the interior of the two end caps were
4 multiple units, I think you said six?

5 A No, the two ends caps actually have an adjoining wall,
6 the other apartments are behind them.

7 Q And how many units would be behind the end caps?

8 A Well, the first set of glass doors would gain you
9 entrance to six apartments on each side.

10 Q So, you are talking about, I want to get this
11 straight, you are talking about twelve smaller apartments in
12 this particular unit or six smaller apartments in this unit?

13 A Six smaller -- technically right behind the McGuire
14 residence would be three smaller apartments, directly behind
15 their back wall is what I am saying, but on the other side
16 of that common way would be another three, so we are talking
17 six.

18 Q We are talking six units, three of which share a
19 common wall with the McGuire residence, correct?

20 A Yes.

21 Q And then you have three other units and then the
22 end cap unit, that's a total of six, seven, eight families
23 located within that one building, right, correct, do you
24 agree with that?

25 A More, but as far as in proximity of the area of the end

1 cap, eight, yes.

2 Q And that's not the extent of this complex?

3 A Oh, no.

4 Q This complex is comprised of numerous units
5 similar to that, correct?

6 A About thirty different buildings.

7 Q So, you have thirty different buildings with
8 varying numbers of apartment in those units, correct?

9 A Correct.

10 Q So, within, and those particular, when I say
11 complexes, I'm talking, again, about that structure that's
12 going to house a number of those apartment, you are talking
13 about them in pretty close proximity to one another,
14 correct?

15 A Separated only by parking areas.

16 Q Little parking sections, and again you said they
17 are along the lines of thirty of those in this particular
18 complex?

19 A Correct.

20 Q So, not that you have a neighbor to your right,
21 neighbor to your left, that's it, you have many, many areas,
22 many people in a small vicinity, is that correct?

23 A The only exception I would say, sir, is that the
24 McGuire unit was the end of an end building facing into a
25 parking lot of a commercial building. It didn't face any

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1 other apartments.

2 Q But certainly to the other side there were a great
3 many apartments surrounding it, right?

4 A Surrounding on the backs and sides, yes.

5 Q And again we talked about the common wall.

6 Now, certainly, the first time that you met Mrs.
7 McGuire it was on June 2nd, correct?

8 A In person meeting, yes.

9 Q In person was June 2nd, 2004, correct?

10 A Yes.

11 Q And you described, you were asked questions about
12 her demeanor on that occasion, right?

13 A Correct.

14 Q And you indicated that Mrs. McGuire seemed upset?

15 A Yes.

16 Q And, obviously, we are talking about within
17 several weeks of being notified, correct, of her husband
18 death?

19 A Yes.

20 Q And you said she was angry, right?

21 A Yes, I did.

22 Q So, it's true to say she showed emotion?

23 A If you asked me my opinion, it wasn't --

24 Q I'm asking if you say being upset and angry is an
25 emotion?

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1 A Being upset is an emotion.

2 Q Likewise being angry is an emotion, correct?

3 A Yes.

4 Q And one of the things I know you didn't say she
5 was making any faces or anything along those lines, correct?

6 A Making faces?

7 Q I'll move on.

8 Now, you testified that you were present when, as
9 far as you know, the first time any law enforcement went
10 into the Woodbridge apartment, correct?

11 A Yes, sir.

12 Q And that would have been approximately June 3rd of
13 '04 or June 1st of '04?

14 A June 2nd.

15 Q June 2nd, so it was the same. I'm sorry, it was
16 the day before the interview with Mrs. McGuire, right?

17 A I believe the interview was the 2nd, if I am not
18 mistaken.

19 Q Your recollection is it might have been the same
20 day?

21 A Yes.

22 Q And you are certainly aware, sir, that at that
23 point in time Mrs. McGuire had vacated the apartment,
24 correct?

25 A Yes, sir.

1 Q So, you, yourself don't know what transpired
2 between, obviously, Mrs. McGuire vacating the apartment and
3 the time you actually entered on June 1st, 2nd or 3rd,
4 whatever the date is, correct?

5 A That would be incorrect.

6 Q That would be incorrect?

7 A Yes, sir.

8 Q By that I mean, sir if you yourself don't know,
9 you indicated that obviously you believed the apartment
10 looked to be very clean, right?

11 A Very clean.

12 Q It was being prepared, are you aware of whether it
13 was being prepared for new tenants?

14 A I have information that it was not, I don't know where
15 I am allowed to go with that. I do have information that it
16 was not prepared yet.

17 Q That it was not prepared for other tenants?

18 A It wasn't touched by anyone yet from the complex, sir.

19 Q It had not been touched by anyone from the
20 complex?

21 A That's correct.

22 Q Now, you were asked questions about some of the
23 things that you did in speaking or assisting with the
24 initial investigation, do you recall some of those questions
25 a moment ago by Ms. Prezioso?

1 A Yes.

2 Q You said you pulled some records, EZ-Pass records
3 and some cell phone records, do you recall that?

4 A When you say pull them, I obtained communication data
5 warrants and they were sent to respective agencies which
6 then responded.

7 Q You are right. You are correct. I stand
8 corrected.

9 Did you actually review those documents?

10 A Yes, sir.

11 Q And you were asked whether you made any inquires
12 regarding casino records, correct?

13 A Yes, sir.

14 Q And when you referred to reaching out to the State
15 Police you were referring to reaching out to retain casino
16 records?

17 A I am not sure what you mean when you say casino
18 records. I was looking for any activity in Bill's name in
19 any of the casinos in Atlantic City.

20 Q And it's your testimony here that you didn't see
21 any activities in Bill's name at any of the casinos in
22 Atlantic City?

23 A I didn't see any records. I spoke to officers via
24 phone from the State Police who told me they did not find
25 any current activity.

1 Q Sir, you are not aware that there were play
2 records in certainly 2003, early 2004 showing activity in
3 the range of a hundred thousand dollars?

4 A No, I am not aware of that.

5 Q And are you aware whether there were any loss fees
6 to casinos during that time period, whether or not there
7 were any losses or gains I should say?

8 A I don't know.

9 Q Are you aware whether Mr. McGuire made any
10 payments to the casinos during that time period?

11 MS. PREZIOSO: Your Honor, I am going to object.
12 The witness said there was nothing current. I think it
13 depends on the definition of current. Obviously, this is
14 not the witness that is going to be putting before the jury
15 the gambling records. The State is well aware of it.

16 THE COURT: Well, Mr. Turano, the witness has
17 already indicated that he was not aware of any such records,
18 so I don't see any point in asking him the same question
19 five different ways.

20 Q Sir, you also asked questions if you were aware if
21 there were any debts, correct?

22 A Yes.

23 Q But the fact of the matter is you didn't do
24 anything to ascertain whether there were any debts, did you?

25 A I'm not sure what you want me to -- what is it you want

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1 me to do to ascertain the debt?

2 Q I would like to find out what you did to ascertain
3 whether in were any debts?

4 A The only thing I learned was he borrowed ten thousand
5 dollars from his partner for the purchase of the house. I
6 don't know if you want to call that a debt. That's what I
7 learned.

8 Q You certainly didn't make any inquires, again,
9 you, yourself, did not personally look at any casino
10 records, correct?

11 A No, sir.

12 Q And you, yourself, did not subpoena or request any
13 casino records, correct?

14 A No.

15 Q Early on in your contact with Mrs. McGuire you did
16 learn that a temporary restraining order had been filed,
17 correct?

18 A Yes, sir.

19 Q In fact, you learned that through court records,
20 correct?

21 A Woodbridge Township court records, yes, sir.

22 Q That was one of the first things Detective Pickell
23 asked you to do?

24 A He didn't specify restraining order, he asked me to
25 find out what I could about William McGuire.

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1 Q That was one of the things you were able to
2 ascertain and report back?

3 A Yes, sir.

4 Q Now, if I could just go back a second, when you
5 went into the 2902 Plaza Drive, initially you reported
6 obviously not detecting any odors or any smells of bleach,
7 correct?

8 A No.

9 MR. TURANO: One second, your Honor.

10 Q Sir, aside from placing the call to the State
11 Police and having whatever conversations you had with regard
12 to their knowledge of casino records and making some
13 inquiries of neighbors several days in June of 2006, did
14 you, yourself, do anything else in connection with the
15 actual investigation?

16 A I was with Pickell and his partner at N.J.I.T. in
17 Newark for the interviews of the co-workers and the boss.
18 When I say boss, I mean Mr. McGuire's boss.

19 Q At what time, point in time did you stop your
20 contact with the Virginia Police, Virginia Beach Police?

21 A From my department that responded to Atlantic City due
22 to the vehicle being located, they returned to Virginia and
23 that pretty much was the end of my assisting them in the
24 investigation.

25 .he \Joraskie-Redirect\

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1 MR. TURANO: I have nothing further.

2 MS. PREZIOSO: May I, your Honor?

3 REDIRECT EXAMINATION BY MS. PREZIOSO:

4 Q Detective, were you ever in charge of this
5 investigation?

6 A No.

7 Q So, at first you were assisting Detective Pickell,
8 correct?

9 A Correct.

10 Q And then it was transferred to the New Jersey
11 State Police Major Crime Unit and the New Jersey Division of
12 Criminal Justice, correct?

13 A That's correct.

14 Q And you worked with them in an assisting capacity
15 for a limited purpose, right?

16 A Correct.

17 Q Now, the information that you got you passed on to
18 the other law enforcement agencies that you were working
19 with?

20 A Certainly.

21 Q And, incidentally, sir, have you kept somewhat in
22 touch with the investigation bringing it to trial now?

23 MR. TACOPINA: Judge, I object to the relevance
24 of that.

25 THE COURT: Yes, I, at the very least I think the

1 question is really vague, Ms. Prezioso, so why don't you
2 rephrase it if you have a relevant question.

3 Q Well, detective, have you ever heard that Bill
4 McGuire gambled in the range of a hundred thousand dollars
5 before Mr. Turano said it, have you ever heard that?

6 MR. TURANO: I object.

7 THE COURT: What's the objection?

8 MR. TURANO: I asked those questions and Ms.
9 Prezioso issued an objection, now she's going to ask the
10 same.

11 MS. PREZIOSO: The witness said no. I didn't get
12 a chance to object, so I wanted to clarify it.

13 THE COURT: I will allow it.

14 Q Did you ever hear that, detective?

15 A No.

16 MS. PREZIOSO: Nothing further.

17 THE COURT: Anything further?

18 RECROSS EXAMINATION BY MR. TURANO:

19 Q Officer, you, yourself, didn't look at any casino
20 records, correct?

21 A No.

22 THE COURT: All right, detective, thank you very
23 much. You are excused.

24 Call your next witness.

25 MR. ROMANYSHYN: State calls James Ryan, your

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1 Honor.

2 J A M E S R Y A N, sworn.

3 DIRECT EXAMINATION BY MR. ROMANYSHYN:

4 Q Good afternoon, sir, are you employed?

5 A Good afternoon, sir.

6 Q Are you employed?

7 A Yes, sir.

8 Q And by whom are you employed?

9 A The State of New Jersey Division of State Police, have
10 been so for approximately a little over twenty-one years.

11 Q In what capacity are you employed by the State
12 Police?

13 A Presently I'm assigned to what's called the ballistics
14 unit. I have been for a little over ten years.

15 Q And did you have prior assignments within the New
16 Jersey State Police?

17 A Yes, sir.

18 Q And what were those, sir?

19 A General road-duty trooper.

20 Q Sir, would you kindly give the jury the benefit of
21 any training that you've had in the area of ballistics?

22 MR. TACOPINA: Your Honor, if this will speed it
23 along, we'll stipulate to his expertise. We have no
24 objection to him being qualified as an expert.

25 MR. ROMANYSHYN: Judge, I'll keep it brief. I

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1 think the jury should have the benefit of some of his
2 specific training. We'll keep it short.

3 THE COURT: Yeah, I agree Mr. Tacopina. I
4 appreciate your willingness to expedite, if you will, but I
5 need to hear also a little bit about the witnesses
6 background.

7 Go ahead.

8 A In our unit we work a little over two years alongside a
9 qualified firearms tool mark examiner. In the course of
10 that period I attended numerous certified firearm's factory
11 courses given by the factories, Remington, Heckler and
12 Coke, Smith and Wesson, Glock, just to name a few. We
13 actually tour firearms manufacturing plants and observe
14 firearms being made initially from a block of steel, in its
15 finished product going out for shipment. Through that
16 course I have test fired thousand of firearms to determine
17 their operability. I microscopically examined thousands of
18 discharged bullets and shells. I have attended numerous
19 advance courses given by the F.B.I. and the Bureau of
20 Alcohol, Tobacco Firearms and Explosives, those being
21 gunpowder and gunshot residue. Bullet scene and bullet
22 trajectory industry courses given by bow the F.B.I. and the
23 Henry Lee Institute of Forensic Science. Advanced certainly
24 serial number restoration course.

25 I'm a member of FTE, the Association of Firearms

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1 Tool Mark Examiners, this is a world-wide association. I
2 lectured at The Sea Girt Academy and central laboratory in
3 Hamilton, New Jersey in regard to firearm's tool mark
4 examinations.

5 I have previously testified in both Superior
6 Courts in New Jersey and Federal Courts as an expert in
7 firearm's tool mark identification.

8 Q Approximately how many types have you testified in
9 court before as an expert, sir?

10 A Thirty-five to forty types.

11 Q Have you ever been denied qualification as an
12 expert?

13 A No, sir.

14 MR. ROMANYSHYN: Based upon Mr. Ryan's training
15 and experience I ask this Court accept him as an expert in
16 the area of ballistics.

17 THE COURT: Based on Detective Ryan's testimony, I
18 am satisfied by virtue of his training and experience, again
19 there being no objection, that he is qualified to testify as
20 an expert in this proceeding in the field of ballistics; and
21 again, ladies and gentlemen, you are reminded about my
22 earlier instructions with regard go expert testimony.

23 Mr. Romanyshyn, please continue.

24 Q Sir, did there come a time when you were asked to
25 examine some bullets in this particular case?

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1 A Yes, sir.

2 Q Can you please describe for the jury how that
3 came about?

4 A Evidence is brought into our lab Friday, it's received
5 at our front counter. The submitting agency has a request
6 form with what items he is submitting to the laboratory;
7 along with our information such as the name of the agency,
8 the time of crime, victim suspect, the agencies case
9 number.

10 When this comes into our laboratory system it's
11 assigned a laboratory number. The laboratory number, it's
12 an internal number.

13 The evidence is actually opened at the counter,
14 it's compared to what's being on the request. At that
15 particular time it's marked, given a number, an item
16 number. Depending on what type of evidence it is, it would
17 be resealed. The submitting agency is given a receipt. A
18 copy of the receipt goes with the evidence and the evidence
19 is placed in what's called a temporary evidence storage
20 facility that's within our particular unit.

21 At such a time during the course of the year when
22 the case comes up for rotation to be done, the firearm's
23 examiner will retrieve the case information, he'll retrieve
24 the evidence, assign it to himself, via a computer data base
25 which is referred to as LIMS, L I M S. It's scanned over to

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1 him. He'll do an examination. The examination is usually
2 peer reviewed by another examiner within our unit.

3 The evidence is then, once it's completed, it's
4 repackaged and sealed and placed in another evidence
5 facility, a completed facility pending the submitting agency
6 to come and retrieve it.

7 Q Sir, I am going to show you items marked State's
8 25A and B. I will ask you to take a look at those items and
9 tell me whether or not you recognize them.

10 A I am going to have to remove these from here, if that
11 would be okay.

12 Q If that's necessary, sir?

13 A Yes, sir.

14 Q Do you recognize those items, sir?

15 A Yes, sir, I do.

16 Q Based on your observations of them can you tell
17 the jury what they are?

18 A Yes, these are two discharge bullets that I examined in
19 our laboratory. They were assigned laboratory number
20 N-0112004001890 and they are marked with that number and
21 they are also marked with the item number that it was
22 submitted on the evidence sheet. Those being number
23 thirteen and number twelve; and what they are, they are
24 referred to as a .38 caliber class discharged lead wad
25 cutter bullet.

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1 Q Sir, did there come a point in time when you
2 compared those two bullets to one another?

3 A Yes, sir.

4 Q And based on that comparison were you able to draw
5 any conclusions about those bullets?

6 A Yes, sir.

7 Q What were those conclusions, sir?

8 A It was my opinion that these two bullets were
9 discharged from the same firearm, in other words they were
10 shot from the same firearm.

11 Q And what, specifically, was that determination
12 based on?

13 A The bullets of the general characteristics, they have
14 six lands and six grooves with a right hand twist, but also
15 the fine stria as the bullets had gone through the barrel of
16 the firearm were transferred onto the lead portions of the
17 bullet and the fine stria has enough agreement between the
18 two bullets for me to conclude that they were discharged
19 from the same firearm.

20 Q Sir, did you make any other comparisons involving
21 these bullets?

22 A Yes, sir, I did.

23 Q And what were those comparisons?

24 A I physically compared these two discharged bullets
25 against some submitted bullets that were not discharged. In

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1 other words, they were manufactured bullets that had not
2 been loaded or fired from a firearm.

3 Q And what, if any, conclusions were you able to
4 draw from those comparisons?

5 A The two bullets that were submitted to us, number
6 twelve and thirteen, these two here, were consistent with
7 the submitted bullets which were, twenty of them, I believe,
8 they were consistent in the caliber, being a .38 caliber.
9 They were consistent with the design of this particular
10 bullet, the wad cutter-style bullet, and also with the
11 hollow base and the three grease rings which are alongside
12 the bullet, they were all consistent with that.

13 Q And to your knowledge, sir, did those other
14 bullets that you compared to these two bullets have anything
15 to do with this case?

16 A I don't know if it was evidence or not, sir.

17 Q Yes.

18 A Yes, obviously it was evidence, I don't know the --

19 Q Based on your examination of the bullets were you
20 able to develop any conclusion as to a list of manufacturers
21 that the markings would be consistent with from the fired
22 bullets?

23 A I'm sorry can, you repeat that.

24 Q When you compared the bullets and you determined
25 there were six lands and grooves, correct?

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1 A Correct.

2 Q And that there was a right-hand twist?

3 A That's correct.

4 Q Is there a manner by which you attempt to
5 ascertain what type of a weapon fired those bullets?

6 A We can, we can measure the lands and grooves of the
7 bullet, the high spots, the low spots on the bullets, we
8 refer to them as lands and grooves. We can actually measure
9 the width of these and we can put that into what's called a
10 general rifling characteristic database which is run by the
11 F.B.I., and the F.B.I. have a list of firearms that meet
12 these same dimensions that are put in also with the same
13 number of lands and grooves and direction of twist, and they
14 can give you a printout of the known firearms that they have
15 seen that use those particular dimensions.

16 Q And do you recall, sir, who some of those
17 manufacturers were?

18 A There were numerous manufacturers involved with that.
19 Astra being one. Taurus being one. If I could refresh
20 myself from any notes, I can name other ones.

21 Q I don't think that will be necessary, sir.

22 Do you recall, when I asked you the question about
23 the other bullets that you compared these two bullets to,
24 the twenty other bullets you just testified about?

25 A Yes.

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1 Q Do you recall from whom you received those
2 bullets?

3 A I believe it was the Division of Criminal Justice. I'm
4 not quite sure.

5 Q Is there anything that would refresh your
6 recollection as to who you received them from?

7 A Yes, that would be the evidence submittal form.

8 Q And do you have a copy of that evidence submittal
9 form?

10 A Yes, I do.

11 Q Please take a look at it and see if that refreshes
12 your recollection.

13 MR. TACOPINA: Can I get an exhibit number on
14 that?

15 Q Sir, does that refresh your recollection as to
16 from where you received those bullets?

17 A Yes, sir.

18 Q And where did you receive them, sir?

19 A From a Detective Sergeant Dalrymple from the New Jersey
20 State Police.

21 MR. ROMANYSHYN: Thank you, sir.

22 No further questions at this time, Judge.

23 CROSS EXAMINATION BY MR. TACOPINA:

24 Q Detective, you only received two discharged
25 bullets in this case, correct?

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1 A That's correct, sir.

2 Q So, the other ones you received were unfired or
3 new?

4 A That is correct.

5 Q And just for comparison purposes, correct?

6 A Just for a physical comparison.

7 Q And did you know who purchased those other
8 bullets?

9 A Who actually, physically purchased them, I don't know,
10 sir.

11 Q Was it a law enforcement agency to your knowledge?

12 A That's my understanding.

13 Q Done for the purpose of your comparison?

14 A That's correct.

15 Q So, the other twenty bullets you received were not
16 recovered as evidence in this case is your understanding?

17 A Not to my knowledge, sir.

18 Q So, the only bullets that were relevant to this
19 investigation were the two that you just told the jury
20 about, correct?

21 A Items number twelve and thirteen.

22 Q Twelve and thirteen, right. So, to your
23 knowledge, the only bullets recovered in this case were two
24 bullets, yes?

25 A Two discharged bullets.

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1 Q Two discharged bullets, yes?

2 A Yes..

3 Q Not four?

4 A What?

5 Q Not four?

6 A No, sir.

7 MR. TACOPINA: Thank you, no further questions.

8 THE COURT: Anything further?

9 MR. ROMANYSHYN: No, sir.

10 THE COURT: Detective, thank you very much. You
11 are excused.

12 THE WITNESS: Thank you, your Honor.

13 THE COURT: All right, members of the jury, that
14 concludes the testimony for today, and as I told you earlier
15 tomorrow there are some other proceedings that the Court has
16 to deal with so there will not be any proceedings related to
17 this trial tomorrow.

18 So, we are going to break for a longer weekend,
19 and I am going to ask that you report back to the jury
20 assembly room on Monday morning at nine a.m.

21 It's very important that you remember not to speak
22 to anyone about the case. Please avoid any type of media
23 coverage about the case. When you come back here on Monday
24 morning I am probably going to ask you to confirm whether or
25 not you have been exposed to any information about the case

1 over the long weekend.

2 So, drive carefully, I think it's still snowing a
3 little bit, and leave your notes on your chair and have a
4 nice weekend and we'll see you on Monday morning.

5 (Jury excused)

6 THE COURT: All right, counsel, with respect to
7 tomorrow, as you may recall the Court had set aside tomorrow
8 to address any oral arguments or questions regarding access
9 by the media of exhibits or transcripts or tapes and it's my
10 understanding that all of those issues have been resolved by
11 order of the Court this morning and that no one wishes to
12 have any further arguments on those points. Is that
13 correct?

14 MS. PREZIOSO: That's correct, Judge.

15 MR. TACOPINA: Yes, your Honor, yes.

16 THE COURT: Are there any other issues that the
17 Court needs to address with counsel for tomorrow's session,
18 Ms. Prezioso?

19 MS. PREZIOSO: Your Honor, the only thing that
20 comes to mind, which I know we had discussed it off the
21 record, was just about Doctor Hua, and I was told we can
22 bring him in at this point. I just wanted to make sure that
23 that was in the record and we are proceeding correctly.

24 THE COURT: When did you expect to call Doctor
25 Hua?

1 MS. PREZIOSO: Judge, the staff has been working
2 on the logistics with several witnesses today, and I don't
3 know exactly what the line-up is, but I would expect he
4 would be coming probably towards the end of next week.

5 MR. TACOPINA: No problem, we'll be ready.

6 THE COURT: Okay, Mr. Tacopina has reported that
7 defense is prepared to address his testimony, so there will
8 be no objection, obviously, to having him called as a
9 witness.

10 MS. PREZIOSO: And, your Honor, has Mr. Tacopina
11 received a report from Doctor Baden?

12 MR. TACOPINA: She's asking you.

13 THE COURT: You are asking me?

14 MS. PREZIOSO: I'm asking just because if the
15 report is received or will be available in short order I
16 would see about delaying Doctor Hua until we can have a
17 copy.

18 THE COURT: Mr. Tacopina, I think, Tacopina, I'm
19 sorry, the question was more directed towards you. Do you
20 have any expert report at this point that you are prepared
21 to turn over to the State?

22 MR. TACOPINA: We don't even have one at this
23 point to turn over, but not yet, your Honor.

24 THE COURT: All right, anything further counsel?

25 MS. PREZIOSO: No, Judge.

1 THE COURT: I am going to ask counsel to remain in
2 the courtroom for a moment so that you can go over with the
3 clerk of the Court the evidence items that have been
4 previously admitted into evidence so that she can be
5 prepared at some point in the future to respond to ask for
6 copies.

7 MR. TACOPINA: Your Honor, did you get the list
8 for Monday?

9 THE COURT: My understanding from Ms. Prezioso was
10 that it wasn't ready, and based upon what she just reported
11 to the Court, is that correct?

12 MS. PREZIOSO: Yes, Judge, I understand you need
13 it before noon tomorrow, and I expect you will have it first
14 thing in the morning.

15 THE COURT: And you will provide a copy to the
16 defense.

17 MS. PREZIOSO: Absolutely.

18 THE COURT: All right, thank you very much.

19 Ladies and gentlemen in the audience, there will
20 be no proceedings regarding this matter tomorrow. As I
21 indicated we had set aside tomorrow for any hearings or oral
22 arguments on the issue of access by the media to exhibits
23 and things of that sort and we resolved all of those issues
24 without oral argument this morning.

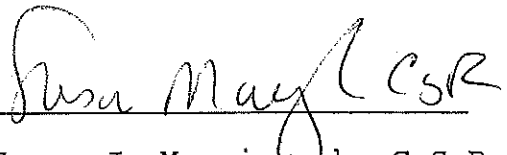
25 So, the trial in this matter will continue on

1 Monday at nine a.m. Thank you very much.

2 (Recess)

3
4 C E R T I F I C A T I O N

5
6 I, SUSAN J. MARCINCZYK, C.S.R., License Number
7 #XI00867, an Official Court Reporter in and for the State
8 of New Jersey, do hereby certify the foregoing to be
9 prepared in full compliance with the current Transcript
10 Format for Judicial Proceedings and is a true and accurate
11 non-compressed transcript of my stenographic notes taken in
12 the above matter to the best of my knowledge and ability.

13
14 
15 Susan J. Marcinczyk, C.S.R.
16 Official Court Reporter
17 Middlesex County Courthouse
18 New Brunswick, New Jersey
19

20
21 Date: 3-1-08
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